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Arraignment

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

07 CR 0541 (RPP)

5 DANIEL B. KARRON,

6 Defendant.

7 -----x

8 New York, N.Y.

June 20, 2007

9 2:30 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.,

12 District Judge

13  
14 APPEARANCES

15 MICHAEL J. GARCIA

United States Attorney for the  
Southern District of New York

16 CHI T. STEVE KWOK

Assistant United States Attorney

17  
18 RON RUBINSTEIN

Attorney for Defendant

19

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## Arraignment

1 ten and \$20,000.

2 MR. KWOK: Your Honor, if I may, I mean these  
3 computers that we're talking about are not just your ordinary  
4 laptop computers. They are very high powered super computers  
5 primarily used for research and other purposes. I don't know  
6 whether it's even cost effective or even technically feasible  
7 to download or make a copy of everything on these hard drives  
8 with terabytes of memory.

9 To the extent, again, that there is any record at all  
10 in those computers I believe the government's already produced  
11 a hard copy print out of those accounting records. The rest I  
12 am not sure what Mr. Rubinstein is referring to in these  
13 computers. But as far as records go relating to this case that  
14 the government intends to rely on those have all been turned  
15 over to defense counsel.

16 MR. RUBINSTEIN: The defense is this case is very  
17 simple. He didn't intentionally do anything wrong, if he did  
18 anything wrong at all. So showing all that he did for the  
19 money is going to be part of the defense to show the jury that  
20 he had no intention of doing anything improper. This man even  
21 after the grant was stopped continued working on --

22 THE COURT: I don't think that flies, Mr. Rubinstein.  
23 I think you can't go into a defense that shows all the good  
24 things he did and all the things that he did. The question is  
25 whether or not these funds were misapplied and that is the

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1 issue.

2 I agree that you have to have a record to be able to  
3 show that they weren't misapplied but I think I haven't heard  
4 anything so far. Maybe you can educate me, but I haven't heard  
5 anything so far that indicates that we should do more than see  
6 whether there's more than a financial record that you require  
7 or any rebuttal of the case that this application of funds is  
8 going is to be produced.

9 MR. RUBINSTEIN: There's also e-mails relating to the  
10 grant, your Honor, and those documentation are important for  
11 the defense. The government -- I'd ask your Honor that the  
12 government provide us with a detail list outlining the \$390,000  
13 that they now claim was inappropriately spent by Dr. Karron and  
14 then at least we have an idea what documents relate to that.

15 THE COURT: They've produced those to you?

16 MR. RUBINSTEIN: No, they have not shown us any list  
17 of where the alleged missing money is.

18 THE COURT: Maybe you ought to go and have a personal  
19 consultation with Mr. Kwok and maybe he can show them to you.  
20 That would be the best way.

21 MR. KWOK: I'll be glad to do that, your Honor.  
22 Again, I think your Honor has it exactly right. The government  
23 is not contending that, for example, some of the money, for  
24 example, that the government contends was misapplied was used  
25 for example to renovate Dr. Karron's apartment. We are not

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## Arraignment

1 saying every cent towards the renovation was spent out of  
2 government funds. Dr. Karron did spend some of his own money  
3 as part of that home renovation. But that doesn't take away  
4 from the fact that the government funds were indeed misapplied  
5 toward home renovations. So I don't know what the records that  
6 Mr. Rubinstein had in mind --

7 THE COURT: He is saying some of the home was used and  
8 as na office.

9 MR. KWOK: That's actually quite irrelevant under the  
10 rules of the grant because even if it was indeed used as an  
11 office you cannot pay overhead expenses using grant money.  
12 Grant money can only be used for direct and research expense  
13 and it is clear rent is not used for those items.

14 THE COURT: Not rent but what about fixings up the  
15 office so that if that -- or bringing electricity or bringing  
16 in high powered computers into the office.

17 MR. KWOK: That's also disallowed and the reason is  
18 simply because there is an approved budget. Every item that  
19 Dr. Karron was allowed to use was listed in that budget and if  
20 you deviate from that budget you first have to seek pre  
21 approval to do that and at no point did Dr. Karron receive  
22 that.

23 THE COURT: Renovation was a budgeted item?

24 MR. KWOK: It was not allowed.

25 THE COURT: Any renovation of the office was a

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## Arraignment

1 budgeted item?

2 MR. KWOK: I don't believe any of it was. We are only  
3 allowed to pay, for example, to hire scientists and research  
4 personnel and to buy a specified number of computers for your  
5 research. But to renovate your apartment or office to eat out  
6 which is another item that Dr. Karron spent money on or to even  
7 pay for Internet services they are specifically disallowed  
8 under the terms of the grant. And another big item is back  
9 rent, and that is also clear that you are not supposed to pay  
10 rent or mortgage under the grant.

11 MR. RUBINSTEIN: The government wants the grant to be  
12 written in granite. The fact of the matter is that these  
13 grants they have modifications all the time. People spend  
14 money, as long as they're spending it legitimately that's an  
15 issue at trial.

16 THE COURT: But, Mr. Rubinstein, it's very clear that  
17 if there's a grant it'll have terms to it and you can argue it  
18 but they are not binding. There can be modifications and the  
19 jury will make a determination.

20 When will you have your letter that you wish to  
21 produce to Mr. Kwok?

22 MR. RUBINSTEIN: I'll have that in a week from  
23 tomorrow which is which is the first of August.

24 THE COURT: When can we hear the reply?

25 MR. KWOK: How about a week.

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA

5 v.

07 Cr. 541 (RPP)

6 DANIEL B. KARRON,

Conference

7 Defendant.

8 -----x

9 New York, N.Y.

August 8, 2007

4:15 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.

12 District Judge

13 APPEARANCES

14 MICHAEL J. GARCIA

15 United States Attorney for the  
16 Southern District of New York

17 One St. Andrews Plaza  
New York, New York 10007

18 CHI T. STEVE KWOK

Assistant United States Attorney

19 RONALD RUBINSTEIN, ESQ.

Attorney for Defendant

20 Rubinstein & Corozzo, PC  
21 260 Madison Avenue  
22 New York, NY 10016  
23 (212) 679-1844  
24  
25

7A9JKARC

Conference

1 claim is look, here's what we found, an audit that instead of  
2 charging only research salaries of associates or whatever under  
3 the grant, the language of the grant, you're making other  
4 charges and those amount to 300 and 75,000 or whatever and here  
5 it is, and here they are.

6 I don't see on their case that there is any  
7 exculpatory evidence that you could find in the computer  
8 because the issue is whether the expenses were appropriate or  
9 not, and the defense would be they're -- the only defense which  
10 you say is the defense they're seeking to make is that look, we  
11 gave you the substantial equivalent and we didn't intend to do  
12 anything wrong, you got the benefit of the research. The  
13 research product is good. We spent the money slightly  
14 differently. I don't know how big your rent was and got this  
15 result.

16 I don't see how anything can be Brady material. It  
17 just doesn't seem to fit into the Brady context.

18 MR. RUBINSTEIN: Your Honor, these notes would show if  
19 there was a dinner that they're claiming, what was discussed at  
20 the dinner. I understand one of the government's witnesses in  
21 this case is Dr. Karron's former accountant who was privy and  
22 aware of all of these documents and what have you, and if I'm  
23 not able to cross-examine this witness based upon documents  
24 that she was aware of that, I could use to show the jury what  
25 her thinking was and what her job was and why she filed this

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Conference

1     audit.

2             THE COURT:  She is the auditor?

3             MR. RUBINSTEIN:  She is the auditor.

4             THE COURT:  She is his accountant?

5             MR. RUBINSTEIN:  His accountant, yes.  She is, what I  
6     understand -- I could be mistaken -- she is the star witness or  
7     one of the star witnesses for the government.  All of these  
8     items we are talking about --

9             THE COURT:  I don't know if she is a star, but a  
10    witness.

11            MR. RUBINSTEIN:  She is at least a significant  
12    witness.  Additionally, apparently the government is claiming  
13    today that if I could put the pieces together, I may be  
14    mistaken, is going to say she advised Dr. Karron not to do  
15    certain things, all right?

16            So these records became very important because she is  
17    privy to all of these records.  Nothing was concealed from her.

18            THE COURT:  She is probably privy to everything.

19            MR. RUBINSTEIN:  Yeah.  How are we going to examine  
20    her?  Are we going to be stuck with her word because we're not  
21    going to have the records?

22            The government says they're not aware of any.  Sure  
23    they're not aware of any because they're very happy with this  
24    cookie cutter approach and they want to look at anything in the  
25    computers.  The only thing they have is what the defense handed

RUBINSTEIN & COROZZO, LLP

COUNSELORS AT LAW

RONALD RUBINSTEIN  
JOSEPH R. COROZZO

BRIANA L. HERMAN

260 MADISON AVENUE  
22ND FLOOR  
NEW YORK, N.Y. 10016

TELEPHONE (212) 545-8777  
FAX (212) 679-1844

November 29, 2007

**Re:** NIST Cooperative Agreement No.: 70NAB1H3050

Dear Dr. Karron:

On November 28, 2007, I spoke with Assistant United States Attorney Steve Kwok in regards to the above entitled matter. According to NIST, there appears to be a balance of \$54,500 available. The government believes we misread the letter and the funds are actually not available.

I advised AUSA Kwok that the funds were legitimately earned and if available I would encourage you to obtain the funds and Mr. Clark advised me that the government's consent was not necessary

I further suggest you place the funds in my escrow account to be used for expenses in the criminal case.

Very truly yours,

*William R. Wilentz* for Attorney  
Ron Rubinstein  
**RUBINSTEIN & COROZZO, LLP**  
Attorney for Defendant  
260 Madison Avenue  
New York, New York 10016  
(212) 545 - 8777  
*Ron Rubinstein*



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Institute of Standards and Technology**  
Gaithersburg, Maryland 20899-

November 05, 2007

Mr. Peter Ross  
Computer Aided Surgery, Inc.  
300 East 33rd Street, Suite 4N  
New York, New York 10016

RE: NIST Cooperative Agreement No.: 70NANB1H3050

Dear Mr. Ross:

The above referenced cooperative agreement ended on September 30, 2004 with a balance in the grant account totaling \$54,500. We want to be sure our records agree with yours before we proceed to deobligate these funds.

If there were additional claims made against the account, please so indicate and we will proceed to deobligate the remaining balance and finalize the closeout of this project.

You may submit the requested information to me via E-mail at the address noted below.

If we do not hear from you by November 30, 2007, we will assume that the information we have is correct and will proceed to deobligate the remaining funds in the grant account.

Sincerely yours,

James M. Browning  
Grants Specialist  
GAMD/DA/CFO/NIST  
100 Bureau Drive, MS 1650  
Gaithersburg, MD 20899-1650  
Phone: 301-975-8088  
FAX: 301-840-5976  
E-mail: [james.browning@nist.gov](mailto:james.browning@nist.gov)

C: Heather Mayton  
Grant File

862ZKAR1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

New York, N.Y.

v.

S2 07 CR 541 (RPP)

DANIEL B. KARRON,

Defendant.

-----x

June 2, 2008

9:30 a.m.

Before:

HON. ROBERT P. PATTERSON, JR.,

District Judge

APPEARANCES

MICHAEL J. GARCIA

United States Attorney for the  
Southern District of New York

BY: STEVEN KWOK

CHRISTIAN EVERDELL

Assistant United States Attorneys

RUBINSTEIN & COROZZO, LLP

Attorneys for Defendant

BY: RONALD RUBINSTEIN

Also Present: Rachel Ondrik, U.S. Dept. of Commerce

Kirk Yamatani, U.S. Dept. of Commerce

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8627KAR2

Opening - Mr. Everdell

1 witnesses come in and they tell their story in chronological  
2 order and it's all wrapped up neatly in an hour. Instead, the  
3 proof is going to come to you in bits and pieces, because each  
4 witness knows his or her own small portion of the larger  
5 picture of this case. So, this opening statement is my chance  
6 to give you an overview, a road map, that I hope will help you  
7 understand the evidence that's to come.

8           So, what will the evidence in this case show? You  
9 will learn that in 2001 the defendant and his company, Computer  
10 Aided Surgery, Incorporated, or CASI, applied for and received  
11 a \$2 million grant from the federal government to pay for his  
12 research in computer imaging. Now, this particular grant was  
13 supposed to last for three years, with the \$2 million being  
14 disbursed in installments over that three-year time period.

15           As you might expect, with such a large amount of  
16 taxpayer money involved in this kind of grant, the federal  
17 government has certain rules that the recipient must follow  
18 when he receives this kind of money and what he can spend the  
19 money on. You will hear what those rules are, but the main  
20 rule is simple and straightforward and it's this: You must  
21 spent grant funds on your research. That means that the grant  
22 money must be spent on things that directly impact and further  
23 the research. The funds cannot be used to pay for things such  
24 as rent and utilities for your office space. Those costs are  
25 just the cost of doing business. Every company has those, and

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Opening - Mr. Everdell

1 they are not covered under the grant. And it means that the  
2 funds cannot be used to pay for personal expenses like meals or  
3 personal debts. Those are not research costs, and they are not  
4 covered either. And you will also hear that in order to keep  
5 track of the grant money the government requires the grant  
6 recipient to submit a budget that outlines what you are  
7 spending your grant money on. All the categories of expenses  
8 are laid out -- salary, travel costs, equipment costs -- and  
9 again the rule is simple, you must stick to your budget. That  
10 means if you tell the government you are going to spend the  
11 grant money for certain things, then you must spend the grant  
12 money for those things; and if you want to make any significant  
13 changes to your budget, you must get approval in writing.

14 Now, those are the rules in a nutshell, and they are  
15 basic, simple and easy to understand, and you will hear that  
16 these rules were repeated for the defendant on several  
17 different occasions by grant officials. You will also hear  
18 that the defendant was given these rules when he received the  
19 grant and signed a form acknowledging that he understood those  
20 rules, and you will also hear that the defendant was told time  
21 and time again by grant officials and by his own employees that  
22 he could not use the grant funds to pay for the things he  
23 wanted to pay for. But the evidence will show that the  
24 defendant refused to listen to them and went ahead and used the  
25 grant money as he wanted.

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Opening - Mr. Everdell

1           And how did he misspend this money? Well, to give you  
2 just one example, ladies and gentlemen, you will hear the  
3 defendant set up his company, CASI, in the living room of his  
4 own apartment in Midtown Manhattan, and the evidence will show  
5 that when CASI received its first installment of \$150,000 in  
6 grant funds, the first thing the defendant did was transfer  
7 \$75,000 of it, half of it, to himself and used it to pay for  
8 personal debts like his credit card bills. And then he used  
9 those same funds to pay himself several thousand dollars in  
10 rent payments for CASI's use of his living room, despite the  
11 fact that he was still living in his apartment and despite the  
12 fact that he had been told specifically on multiple occasions  
13 that rent was not an allowable expense under any circumstances.

14           The defendant's misuse of the grant funds does not end  
15 there. You will also hear that he used grant funds to pay for  
16 so-called equipment, electronic gadgets like a GPS tracking  
17 device and a digital camera and household items like a blender  
18 and shoe rack, items that had nothing whatsoever to do with his  
19 research. And you will hear that the defendant used grant  
20 funds to pay for thousands of dollars worth of dental and other  
21 cosmetic medical procedures. And you will also hear about how  
22 the defendant adamantly resisted efforts of everyone around him  
23 to convince him that he was spending money on things that  
24 weren't allowed and to fix what he had done before.

25           For example, you will learn that the defendant hired a

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Opening - Mr. Everdell

1     bookkeeper to go through the company's books and records in  
2     connection with the first year audit of his company, and when  
3     that bookkeeper reclassified certain expenses and changed them  
4     from grant expenses to nongrant expenses according to the  
5     rules, the defendant went back into the books and changed them  
6     right back again so that he could be sure that grant funds  
7     could be used to pay for them.

8             The end result of all this, ladies and gentlemen, is  
9     that the defendant has been charged in a one count indictment  
10    with crime of misapplying government grant funds.

11            So, how is the government going to prove its case to  
12    you? Here is how:

13            You will hear testimony from two of the government  
14    officials that were assigned to administer the defendant's  
15    grant, and they will explain to you what the rules of the grant  
16    are and which expenses you can and cannot use grant funds to  
17    pay for. And they will tell you how they spoke to the  
18    defendant on numerous occasions both in person and on the phone  
19    and told him over and over again that he could not use grant  
20    funds to pay for things such as rent and utilities and other  
21    nonallowable expenses. And you will hear from two auditors who  
22    looked at the company's books, and they will tell you that when  
23    they looked at the company's expenses and separated out the  
24    expenses that were allowable under the grant from the expenses  
25    that were not allowable under the grant, they found that

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Opening - Mr. Everdell

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Opening - Mr. Everdell

1 hundreds of thousands of dollars of government money had been  
2 spent on expenses that were either not in the budget or were  
3 unrelated to the research that the grant was supposed to fund.

4 And you will also hear from three people who worked  
5 for the defendant at CASI, his company. They will tell you  
6 what it was like to work with the defendant, how he refused to  
7 listen to their advice about what he could spend the grant  
8 money on, how he changed the bookkeeping entries in the CASI  
9 books and records to make sure that certain expenses were  
10 classified as research-related expenses so that they could be  
11 paid for with grant funds, and how he told them he thought he  
12 could do what he pleased with the grant money.

13 Finally, you will be seeing a number of documents that  
14 will show you the fraud in clear black and white. In  
15 particular you will see an analysis of the defendant's personal  
16 bank account and the bank accounts of CASI, and you will see  
17 how virtually 100 percent of CASI's income was from the grant  
18 funds and how those funds went to pay for all of the  
19 nonallowable expenses that I mentioned before.

20 Now, before I sit down, ladies and gentlemen, I would  
21 like you to do three things during the course of this trial:

22 First, pay close attention to what the witnesses have  
23 to say, and pay close attention to the exhibits that are  
24 introduced into evidence.

25 Second, listen very carefully to Judge Patterson's

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Opening - Mr. Rubinstein

1 that they're complaining about. And when they say that he is  
2 not allowed to spend money on rent, well, that's in the  
3 ordinary course, that's in the rules, we concede that. But  
4 they also, the grant administrators, could adjust the rules.  
5 Because the concept of rent, as the government suggested in  
6 their opening, is that most companies, they're doing different  
7 things, so the rent, it's hard to attribute rent to one  
8 specific thing if they are working on three or four projects.  
9 Here CASI was working on one project. The electric utilities  
10 went up double, we are going to show you, in the time that the  
11 grant was in operation.

12 And what did Dr. Karron do? He did everything he  
13 could in his power to make this project work. And he hired  
14 accountants. He hired bookkeepers, he hired accountants, and  
15 he hired an accountant who was paid, Ms. Hayes. She is the  
16 star government witness, his accountant, his accountant who  
17 improperly wore two hats because she also became the auditor  
18 for the project, and she is supposed to be submitting the audit  
19 budget, the audit, after the first year. Well, the first year  
20 ended September 30, 2002. You know when Ms. Hayes got that  
21 budget in? In June of 2003. She got some extensions.

22 So, in the end Ms. Hayes, who was paid by Dr. Karron,  
23 was really not working for him, she was working for the  
24 government.

25 And I submit to you you are going to find out that bad

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Opening - Mr. Rubinstein

1 audits are not criminal. There are specific legitimate  
2 pathways outlined in the rules to resolve audit problems  
3 without making it criminal, and a grant recipient who is  
4 attempting to resolve a difference of opinion may have  
5 different procedures. Dr. Karron says I'm entitled to these  
6 fringe benefits because all of my employees are entitled to  
7 these fringe benefits.

8 They want to say he is not entitled. They talked  
9 about medical. Yes, there were specific medical expenses, but  
10 he has a right to negotiate these things civilly. And even if  
11 they don't agree with him civilly, it doesn't mean that it was  
12 criminal. Because the judge is going to tell you what the law  
13 is, and I am not going to trespass on his province, but you are  
14 going to find that Dr. Karron never intended to commit a crime.  
15 And what I'm going to show, what he did in his own convoluted  
16 way is going to prove to you beyond a reasonable doubt that he  
17 never intended to commit a crime.

18 He had four different color checks for each different  
19 company that he had that was related to this. He then scanned  
20 every single document, every single document he ever came in  
21 touch with. He didn't hide anything. I call upon them to  
22 prove. They said it, that he changed records. He scanned  
23 every single document he had, and they were in the computer,  
24 and he hid nothing, nothing. How do you steal when you keep  
25 records? This is a ma and pa science operation store. It's a

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862ZKAR3

Opening - Mr. Rubinstein

1           MR. RUBINSTEIN: So that tells you how significant the  
2 manual is. And I submit to you that there came a time that he  
3 did start. They did prepare a manual. It was after the grant  
4 was suspended, but they did prepare a manual. And all the  
5 items, which the fringe benefits, they were budgeted for  
6 110,000 a year, they spent less than \$110,000 a year. Most of  
7 the employees that Dr. Karron had, who were full-time  
8 employees, were college professors and people at academia who  
9 had their own health insurance. So they didn't need the  
10 benefit. But if someone needed the benefit, he gave child care  
11 to a bookkeeper.

12           They talk about the rent. I submit to you that  
13 doesn't prove any criminality. Most of the rent that was paid  
14 to Dr. Karron was rent that was due him prior to the grant.  
15 They just didn't have the money so they didn't, they didn't pay  
16 it.

17           And also there's little question that he could've  
18 gotten permission to have the rent, because it wasn't what they  
19 call an indirect expense any more, because it was the only  
20 expense for that project. And there was no attempt to hide  
21 that these checks were written for rent. It's on the memo of  
22 the checks. Does he intend to commit a crime if he does that?

23           Part of this \$500,000 they're talking about are on  
24 salaries, salaries of other people that they disallowed. The  
25 government order, disallowed. Why? He had a manager, an

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862ZKAR3

Lide - direct

1 applicant can draw.

2 Q. Now what, if anything, does the grant --

3 THE COURT: In whose name is the bank account?

4 THE WITNESS: I'm sorry?

5 THE COURT: In whose name is the bank account?

6 THE WITNESS: The bank account is in the name of the  
7 for profit company. Thank you.

8 THE COURT: The for profit company.

9 THE WITNESS: Correct. The money must flow to a  
10 company that is for profit. It cannot flow, for example, to a  
11 university.

12 Q. And what, if anything, does the grant recipient have to  
13 contribute to the costs of the research?

14 A. A single applicant must pay all of the indirect costs and  
15 can contribute to the direct costs.

16 Q. What are these direct versus indirect costs?

17 A. Direct costs are those funds that go directly to the  
18 research, such as individual salaries or equipment needed to  
19 perform that research.

20 Q. How about indirect costs?

21 A. Indirect costs are things that would be spread over all of  
22 the activities of that company, such as facilities, rent,  
23 electricity, legal fees, secretarial support, administrative  
24 support, looking for other funding, that sort of thing.

25 Q. So if a grant has the cost shared requirement, where does

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8637KAR1

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

3

4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

5

6 Defendant.

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7 -----x

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8

8 June 3, 2008

9 9:20 a.m.

9

10

10 Before:

11

11 HON. ROBERT P. PATTERSON, JR.,

12

12 District Judge

13

13

14 APPEARANCES

14

15 MICHAEL J. GARCIA

15 United States Attorney for the

16 Southern District of New York

16 BY: STEVEN KWOK

17 CHRISTIAN EVERDELL

17 Assistant United States Attorneys

18

18 RUBINSTEIN & COROZZO, LLP

19 Attorneys for Defendant

19 BY: RONALD RUBINSTEIN

20

20 Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21 Kirk Yamatani, U.S. Dept. of Commerce

22

23

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8637KAR1

Lide - direct

1 A. I helped develop some of the rules and regulations, and I  
2 have followed them in all of the projects that I manage.

3 Q. What are a grantee's obligation under that program with  
4 respect to their budget?

5 A. Their obligation is that they adhere to the budget and all  
6 of the rules and regulations in these documents.

7 Q. Are there circumstances under which they can deviate from  
8 the budget?

9 A. Yes, there are. For any given budget year, for the amount  
10 of money allocated to that year, they can move up to 10 percent  
11 from one category to another as long as those categories exist  
12 in the budget.

13 Q. What if they want to move money that exceeds the 10 percent  
14 annual budget amount?

15 A. They must ask for permission and get written prior approval  
16 before the new budget is authorized.

17 Q. What if they want to add a new category altogether?

18 A. They must ask for permission and get written prior approval  
19 before they add that category.

20 Q. Ms. Lide, are oral approvals ever given?

21 A. No.

22 Q. Are there situations where grantees can spend the money  
23 first and seek approval after the fact?

24 A. It is the exception to the rule. That happens  
25 occasionally, but when that happens, any of the money spent

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Lide - direct

1 before the written approval is given is at the grantee's risk.

2 Q. Now, are there certain principles that dictate whether ATP  
3 will pay for certain expenses or not?

4 A. Yes, there are, and those are all in these documents.

5 Q. What are some of those basic rules?

6 A. Basically ATP will not pay indirect costs for single  
7 applicants, such as rent, facility renovations, legal fees,  
8 administrative costs for secretaries and that sort of thing,  
9 which is spread over the whole company's activities.

10 Q. And do you pay for expenses incurred before the start of  
11 the grant program?

12 A. No, we call them sunk costs, and nothing incurred before  
13 the actual start date of the project can be charged to the U.S.  
14 government.

15 Q. How do grantees know about all of these rules that you just  
16 described to us?

17 A. They know about these rules in these documents that are  
18 exhibits 1 through 4 through conferences that we give, through  
19 telephone advice that we always have available, and through a  
20 kick-off meeting which is what is presented in Exhibit 4.

21 Q. What is a kick-off meeting?

22 A. A kick-off meeting is a meeting between the grantee and the  
23 project management team at NIST where we go through all of the  
24 rules and regulations, ask if there are any questions, and make  
25 sure that the grantee understands the responsibilities of being

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863ZKAR2

Lide - direct

1 A. Early in the project there were some minor changes to  
2 basically personnel and equipment.

3 Q. And what, if anything, did you discuss with the defendant  
4 about the topic of rent?

5 A. Rent is an unallowable cost. He --

6 THE COURT: No.

7 MR. RUBINSTEIN: Objection, your Honor. It's not  
8 responsive.

9 THE COURT: What did you say to the defendant about  
10 rent?

11 THE WITNESS: It is an unallowable cost.

12 THE COURT: That came up in the conversation?

13 THE WITNESS: Yes, sir, it did.

14 THE COURT: All right.

15 Q. Now, Ms. Lide, what difference would it have made if the  
16 apartment was used, in part, as an office?

17 A. ATP does not pay rent, so it would make, make no  
18 difference.

19 Q. Did you explain this to the defendant?

20 A. Yes.

21 Q. What, if any, was his response?

22 A. That in -- for this grants, there were unique circumstances  
23 and it should be considered.

24 THE COURT: Can you tell us, approximately, when the  
25 conversation took place?

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863ZKAR2

Lide - direct

1 THE WITNESS: Very close to the beginning of the  
2 project, certainly right after the beginning of the 2002.  
3 That's the best of my recollection.

4 THE COURT: All right.

5 Q. And what did you say to him in response to that?

6 A. That ATP does not pay rent; it is an unallowable cost. He  
7 could propose this to the grants officer and see what would  
8 happen, but that it was -- it has never been done.

9 Q. What, if any, other categories did you discuss in your  
10 conversations with the defendant?

11 A. One of the other major categories was renovations to the  
12 existing space, because the computers were making the space  
13 extremely hot, and we discussed improving that space with  
14 additional electricity. And, once again, that is a capital  
15 improvement, which ATP does not pay for.

16 Q. Did you tell that to the defendant?

17 A. Yes.

18 Q. What, if anything, did you talk about with the defendant  
19 about the equipment?

20 A. Equipment must stay within the amount on this budget, and  
21 any change in the amount of equipment needed, any changes in  
22 major purchases would have to be approved in writing before  
23 that could occur.

24 Q. And what, if anything, did you discuss with the defendant  
25 about fringe benefits?

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8637KAR3

Lide - cross

1 THE COURT: Is that DDD?

2 MR. RUBINSTEIN: Five Ds, your Honor.

3 THE COURT: Five Ds, as in dog.

4 MR. RUBINSTEIN: 3501 five Ds.

5 Your Honor, the government hasn't provided these  
6 documents to the jury, your Honor.

7 THE COURT: I understand.

8 MR. RUBINSTEIN: I know, but the jury is looking.

9 THE COURT: You won't have it there in your books.  
10 What's your question on the document?

11 Q. Yes. Does that refresh your recollection of discussions  
12 about New York state, attempting to get New York state funding?

13 A. Even without that e-mail, I acknowledge that CASI was  
14 trying to get other funding.

15 Q. And you said something about that they had indicated they  
16 wanted to open an office in downtown Manhattan, correct?

17 A. That's what I recall Dr. Karron telling us, yes.

18 Q. And in fact you are aware that it was virtually impossible  
19 to find offices in downtown Manhattan after 9/11/01, correct?

20 A. I honestly thought -- I recall some discussion on perhaps  
21 rent would be cheaper and it would be easier, and there were  
22 also other offices being considered.

23 Q. And one of them was at CUNY.

24 A. Correct.

25 Q. And in fact did you learn that CUNY wanted \$1 million in

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8637KAR3

Lide - cross

1 rent to run the CASI project out of their facility?

2 A. I did not know that.

3 Q. Did you inquire of Dr. Karron at any time what happened to  
4 the facility at CUNY?

5 A. Actually the quarterly reports reported that they were  
6 still looking for space, and although it hadn't come through  
7 yet it was still a possibility, and that documentation  
8 indicated to us that he was still pursuing other lab space.

9 Q. And you came in contact with this Mr. Orthwein, correct?

10 A. Correct.

11 Q. You met him personally?

12 A. Correct.

13 Q. And you had a number of telephone calls with him, correct?

14 A. Correct.

15 (Continued on next page)

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863zkar4

Lide - cross

1 A. Yes.

2 Q. And indirect -- and the reason for that is that if a  
3 business is functioning, they may have other customers and  
4 other work and they don't apply to costs, divide up the costs  
5 of the rent between a number of different customers?

6 A. Is that a question, sir?

7 Q. Yeah.

8 A. Or statement?

9 Q. It's a question.

10 A. No. The reason actually for a single company paying its  
11 own indirect cost is because the U.S. Congress set up the  
12 Advanced Technology Program as a cost sharing program, and they  
13 wanted the government to share the risk. But they also wanted  
14 to know that the for profit company had something at risk also.  
15 So it's by statute, the ATP statute, which is part of the  
16 Omnibus Trade Bill of 1988 established that, and that was the  
17 reason for it.

18 Q. In fact, there's a 3.61 co-pay, right? Is that so that the  
19 person has to put up a co-pay?

20 A. No sir. No, sir. The only requirement, according to the  
21 ATP statute for a single company, is that they pay their own  
22 indirect costs. They can also propose to pay some of the  
23 direct costs, which in CASI's case was the case.

24 Q. And they could request that ATP permit them to pay some  
25 indirect costs and approve that, correct?

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863ZKAR6

Snowden - direct

1 MR. EVERDELL: Yes, your Honor. Understood.

2 Q. All right, Ms. Snowden, let me ask you this question. You  
3 said he contacted you, is that right?

4 A. Yes.

5 Q. Did you two have a discussion?

6 A. Yes.

7 Q. What questions did he ask you, if any, during that, those  
8 conversations?

9 A. Was he allowed to pay for rent and utilities, with the ATP  
10 federal funded grant.

11 Q. And rent for what, rent and utilities for what?

12 A. For the condo in which the -- at this point I guess CASI,  
13 the company, was being housed.

14 Q. And whose condo was that?

15 A. Dr. Karron's condo.

16 Q. And what was your response to the question, can rent and  
17 utilities be paid for with ATP funds?

18 A. No, they're unallowable costs.

19 Q. And why is rent not, and utilities not allowable cost?

20 A. For one thing, they're considered indirect costs, and  
21 they're -- indirect costs for us is general and administrative  
22 costs like water, electricity, heat, something that ATP and  
23 federal funds we do not pay for.

24 Q. Now, something like rents and utilities be an allowable  
25 expense under the grant rules if the only project that the

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863ZKAR6

Snowden - direct

1 grant was recipient was working on was the project that was  
2 funded by the ATP money?

3 A. No.

4 Q. It wouldn't make any difference?

5 A. It makes no difference at all.

6 Q. What if the defendant was living in the apartment where the  
7 company was housed, would that make any difference whether  
8 grant money could be used for rent?

9 A. No, not at all.

10 Q. All right. Now, turning to your conversations with the  
11 defendant, did he contact you or did you contact him?

12 A. He contacted me.

13 Q. And why -- oh, withdrawn, your Honor. Did you two have a  
14 conversation?

15 A. Yes.

16 Q. And what did you talk about?

17 A. He had the same conversation -- question as Lee Gurfein.

18 Q. Which was what?

19 MR. RUBINSTEIN: Can we establish a time, your Honor,  
20 with these conversations?

21 THE COURT: Yes. Approximately when did these  
22 conversations take place, approximately?

23 THE WITNESS: Oh, this is -- they first started taking  
24 place before the kickoff. So that's in October of 2001.

25 THE COURT: This is about the rent?

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863ZKAR6

Snowden - direct

1 THE WITNESS: This is about the rent and utilities.  
2 This is right after he was told that he -- he received the  
3 documents that he would be receiving this federal fund, and  
4 then it continued.

5 THE COURT: All right. Then the next conversation you  
6 said that was with Gurfein. What about the conversation  
7 with --

8 THE WITNESS: They --

9 THE COURT: -- Dr. Karron?

10 THE WITNESS: They both would call me, just --

11 THE COURT: Same time?

12 THE WITNESS: Yeah. No, like a different day. Like  
13 Lee would call me one day, and then Dr. Karron would call me  
14 another day and ask the same exact question.

15 THE COURT: They both were all in October?

16 THE WITNESS: No. Some were in October, and then  
17 later on after the kickoff, they continued to call me and ask  
18 me the same exact questions.

19 THE COURT: All right.

20 THE WITNESS: Okay.

21 Q. All right. Again, just to clarify the conversations with  
22 the defendant, we discussed your conversations with Lee  
23 Gerfein, but what did you two discuss, you and the defendant?

24 A. We discussed rent and utilities.

25 Q. And what specifically did the defendant ask you?

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863ZKAR6

Snowden - direct

1 A. He asked me were there allowable cost, and I told him over  
2 and over again, no. He also -- we had a conversation about --  
3 during this time was 9/11, and the State of New York had told  
4 them they would give him some space. And I guess, I don't know  
5 what agreement they had, but since 9/11 they rescinded the  
6 offer. So, therefore, he was inside of his apartment. I said  
7 I understand this, but I'm sorry; unfortunately, federal  
8 funding grants, we do not pay for rent and utilities, so  
9 therefore, the answer was no, time and time again.

10 Q. And about how many times were you contacted about this?

11 A. Numerous times. Between Lee and Dr. Karron, they would tag  
12 taking team. They would both call me and ask the same  
13 questions like a day apart, and they would consistently get the  
14 same exact answer.

15 Q. What answer was that?

16 A. They were unallowable costs and, no, you can not use  
17 federal funds.

18 Q. Did you ever tell the defendant or Lee Gerfein that rent  
19 and utilities were allowable expenses under the ATP funds?

20 A. Never.

21 Q. Did you ever approve any rent or rent payment requests from  
22 the defendant or anybody at CASI?

23 A. No, never.

24 Q. All right. Aside from calling you with questions, were  
25 there any resources available to the defendant to instruct him

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8647KAR1

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

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4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

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6 Defendant.

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8 June 4, 2008

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9:20 a.m.

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10

10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

12

12 District Judge

13

13

14 APPEARANCES

14

15 MICHAEL J. GARCIA

15 United States Attorney for the

16 Southern District of New York

16 BY: STEVEN KWOK

17 CHRISTIAN EVERDELL

17 Assistant United States Attorneys

18

18 RUBINSTEIN & COROZZO, LLP

19 Attorneys for Defendant

19 BY: RONALD RUBINSTEIN

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20 Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21 Kirk Yamatani, U.S. Dept. of Commerce

22

23

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Snowden - direct

1 office, of course I have to discuss it with my supervisor  
2 Marilyn Goldstein.

3 Q. What sorts of things did the defendant discuss with you in  
4 these subsequent contacts?

5 A. Subsequent contacts were basically about could he use  
6 federal funds to pay for rent and utilities.

7 Q. So, is this a similar topic as before?

8 A. Exact similar. It's the exact topic.

9 Q. And what was your response to him on those occasions that  
10 he talked to you?

11 A. It was always no. No matter what he said, how he said it  
12 to me, it's no, these are taxpayers money and we do not use  
13 that to pay for rent and utilities.

14 Q. Did you hear from anybody else from CASI after the kick-off  
15 meeting?

16 A. Yes.

17 Q. Who did you hear from?

18 A. Dr. Karron and Lee Gurfein.

19 Q. And how did Lee Gurfein contact you?

20 A. He called me.

21 (Defendant present)

22 Q. And what if anything did you discuss with Lee Gurfein?

23 A. The same thing, about calls, could he use the federal funds  
24 to pay for rent and utilities.

25 Q. And what if anything was your response to Mr. Gurfein?

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8647KAR1

Snowden - direct

1 A. No. Again and again, absolutely not.

2 Q. All right, Ms. Snowden. Did there come a time when there  
3 were amendments to this grant, the CASI ATP grant?

4 A. Yes.

5 Q. And if you can pull out in front of you the folders that  
6 are in evidence, Government's Exhibits 22, 23, 24, 25 and 26.

7 A. OK.

8 Q. Have you had a chance to look at those documents?

9 A. Yes.

10 Q. Do you recognize those documents?

11 A. Yes.

12 Q. What are those documents?

13 A. These are amendments to the award.

14 Q. And over what course of time were these amendments  
15 submitted and approved?

16 A. Including the original document that he signed to accept  
17 the grant, October 2001 through June 2003.

18 Q. Were these amendments actually approved by NIST?

19 A. Yes, these are all approved amendments, yes.

20 Q. In general, what kinds of changes were made to the grant as  
21 a result of these amendments?

22 A. Administrative changes and a budget change.

23 Q. Why don't you take a look at Government Exhibit 22. If you  
24 can display that as well. Do you see that document,

25 Ms. Snowden?

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864ZKAR4

Snowden - cross

1 Q. I read correctly from that document?

2 A. I agree that you read them correctly from the document.

3 Q. Thank you.

4 THE COURT: And that that paragraph, as I understand  
5 it, is part of the government form that is submitted --

6 THE WITNESS: Yes.

7 THE COURT: -- to the grantee to fill out.

8 THE WITNESS: Yes.

9 THE COURT: So is there any dispute about that, Mr.  
10 Rubinstein? I just --

11 MR. RUBINSTEIN: Not at all.

12 THE COURT: What?

13 MR. RUBINSTEIN: None at all. I just wanted to  
14 show --

15 THE COURT: I don't see any dispute between you and  
16 the witness, so please go ahead.

17 BY MR. RUBINSTEIN:

18 Q. Now Dr. Karron, did there come a time he requested that --  
19 can I have that document, back, ma'am, that 3504 that I gave  
20 you?

21 (Hanging)

22 Q. Now, in these discussions that you had with Dr. Karron  
23 about, rent and utilities aside, did you say anything else  
24 other than no, when he asked you about the grant money covering  
25 rent and utilities?

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864ZKAR4

Snowden - cross

1 A. I said no.

2 Q. Did you discuss this with Miss Goldstein, the supervisor --

3 A. Yes.

4 Q. -- the fact that Ms. Goldstein advised you that if CASI got  
5 commercial space and if they made a lease in the name of the  
6 grant ATP, DMT, that that would be an acceptable expense?

7 A. No, it's not an acceptable expense.

8 Q. No, no. Did you have that discussion with Ms. Goldstein?  
9 Did you -- did Ms. Goldstein tell you that?

10 A. No.

11 Q. Did you ever tell Dr. Karron that, why don't you increase  
12 your salary and pay it out of your salary, this rent figure?

13 A. Never.

14 Q. Did Dr. Karron advise you at any time that the rent monies  
15 that were being paid were being paid for a time period before  
16 the ATP grant, and it was back rent owed?

17 A. No.

18 Q. So it was your understanding, when you spoke to Dr. Karron,  
19 that he was talking about current rent while he was receiving  
20 funds from ATP?

21 A. It was to my understanding that he was asking to pay for  
22 current, current -- use current funds to pay for rent, and the  
23 current funds were direct costs. You can not use -- you can't  
24 use ATP money. Once he rendered services and he had a pay  
25 check at the end of the day, he could do whatever he wanted.

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8647KAR5

1 Government Exhibit in this trial, and it is signed June 3,  
2 2008, New York, New York, on behalf of the United States by  
3 Steve Kwok, and on behalf of Daniel B. Karron by Ronald  
4 Rubinstein, Esquire."

5 Your Honor, the government moves for the admission of  
6 this stipulation and the exhibits mentioned therein.

7 MR. RUBINSTEIN: No objection.

8 THE COURT: No objection? Let me have a copy of the  
9 stipulation, please.

10 Government's Exhibits 80, 81, 90 and 100, and Exhibits  
11 101, 102, 103, 104 and 104A are admitted in evidence pursuant  
12 to stipulation to the parties.

13 DEPUTY COURT CLERK: 104A or 120A?

14 THE COURT: I'm sorry. 104 and 120A. They are  
15 admitted into evidence. Thank you.

16 (Government's Exhibits 80, 81, 90, 100, 101, 102, 103,  
17 104, 120A received in evidence)

18 (Government's Exhibit 900 received in evidence)

19 MR. KWOK: The government calls Belinda Riley.

20 BELINDA RILEY,

21 called as a witness by the government,

22 having been duly sworn, testified as follows:

23

24 DEPUTY COURT CLERK: Please state your name, and spell  
25 your first and last name slowly for the record, please.

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8647KAR5

1

2 THE WITNESS: My name is Hazel Riley, H-A-Z-E-L

3 R-I-L-E-Y, but I go by Belinda.

4 DIRECT EXAMINATION

5 BY MR. KWOK:

6 Q. Good afternoon, Ms. Riley.

7 A. Good afternoon.

8 Q. Where do you work?

9 A. Department of Commerce, Office of Inspector General, the  
10 Atlanta region.

11 Q. What's your job title?

12 A. Assistant regional inspector general for audits, Atlanta  
13 region.

14 Q. Is that a supervisory position?

15 A. Yes, it is.

16 Q. How long have you been a supervisor?

17 A. For about two years.

18 Q. What do you do in your current job?

19 A. I supervise several employees, and I plan audits and other  
20 duties assigned.

21 Q. What did you do before you became a supervisor?

22 A. I was an auditor reviewing government grants or government  
23 programs.

24 Q. You were an auditor with which department?

25 A. The Department of Commerce, Office of Inspector General,

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8647KAR5

Riley - direct

1 since June of '97.

2 Q. What were your duties and responsibilities when you were an  
3 auditor with the Department of Commerce?

4 A. To audit commerce programs, work up commerce grants, under  
5 the various agencies.

6 Q. What did you do before then, before you joined the commerce  
7 department?

8 A. I was a revenue agent with IRS for about 11 years.

9 Q. Can you give us a time frame if you remember?

10 A. I started in September of '86 and left in June of '97.

11 (Continued on next page)

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Riley - direct

1 Q. And what did you do as an agent with the IRS?

2 A. For the first -- I audited individual tax returns,  
3 corporate tax returns, excise tax returns.

4 Q. Ms. Riley, what's your educational background?

5 A. I have a bachelors of -- I have a B.A. in accounting, a  
6 B.A. in accounting information systems, a Bachelor of Science  
7 in Computer Science Programming Option, and I am a certified  
8 CPA.

9 Q. How did you become a certified CPA, what --

10 A. Certified Public Accountant.

11 Q. What does CPA stand for?

12 A. Certified Public Accountant.

13 Q. How did you become certified?

14 A. I took a CPA exam at the time, I think it was a  
15 two-and-a-half day test that's like 19 hours, and you also had  
16 to have five years for government to become a CPA in  
17 accounting.

18 Q. Miss Riley, what, if any, professional recognition have you  
19 received for your accounting and auditing work?

20 A. I have two bronze medals and a silver medal awarded from  
21 the Department of Commerce.

22 MR. KWOK: Your Honor, government offers Belinda Riley  
23 as an expert in accounting and auditing procedures.

24 MR. RUBINSTEIN: No objection, your Honor.

25 THE COURT: All right. Ms. Riley is accepted as an

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Riley - direct

1 expert in accounting auditing procedures -- accounting and  
2 auditing procedures.

3 BY MR. KWOK:

4 Q. Ms. Riley, what kinds of grants does your office audit?

5 A. We audit NIST ATP grants, which is National Institute of  
6 Standards and Technology Advanced Technology Program, audits  
7 for research. We audit NTIA grants in telecommunications. We  
8 audit EDA grants, which is Economic Development Administration,  
9 whatever -- we can audit any grant that one of our commerce  
10 agencies give.

11 Q. Do all grants awarded by the Commerce Department get  
12 audited by the Office of the Inspector General?

13 A. No.

14 Q. How does your office become involved?

15 A. Our office becomes involved by request from NIST or it  
16 could be from the hot line call that says that they suspect an  
17 organization is using fraudulent, doing fraudulent activity.  
18 Or we have a -- we review all of the NIST ATP research grant  
19 awards submitted by the CPA firms, and so if during one of our  
20 reviews someone sees suspicious, we may audit that award.

21 Q. How many audits have you handled since you joined the  
22 department?

23 A. Probably about 10 or 15.

24 Q. How many times have you testified in a criminal trial  
25 before in connection with your auditing work?

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Riley - direct

1 A. None.

2 Q. Ms. Riley, did there come a time when you became involved  
3 in auditing an Advanced Technology Program grant or ATP grant  
4 awarded to a company known as CASI?

5 A. Yes.

6 Q. Who was the principal investigator of that grant?

7 A. Dan Karron.

8 Q. Do you see Dan Karron in the courtroom here today?

9 A. Yes, he's over there.

10 Q. Could you describe an article of clothing he's wearing?

11 A. He's got glasses -- he's got on glasses, a pony tail and is  
12 that a white and green tie?

13 MR. KWOK: Your Honor, may the record reflect that the  
14 witness has identified the defendant?

15 THE COURT: All right, the record will so reflect.

16 Q. Ms. Riley, how did you become involved in the CASI audit?

17 A. The NIST grants officers sent a letter to our -- the Office  
18 of Inspector General requesting an audit, and I was assigned  
19 the audit.

20 Q. What did they ask you to do?

21 A. To determine the financial status of the grant project.

22 Q. And when was this, approximately?

23 A. We received requests in May of 2003, approximately.

24 Q. What did you do upon receiving this request?

25 A. I called CASI to schedule an initial appointment for the

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Riley - direct

1     audit.

2     Q.   Where did you go to conduct this audit?

3     A.   To the CASI office apartment.

4     Q.   And where is that?

5     A.   In Manhattan.

6     Q.   You said apartment.  How do you know it was an apartment?

7     A.   Well, on some of the visits, Mr. Karron would be getting  
8     out of bed to answer the door because I would get there early  
9     in the morning, 10:00 o'clock, 9, 10:00 o'clock, and he was a  
10    late night person.

11    Q.   And what was the objective of your visit?

12    A.   To determine the financial status of the grant cost.

13    Q.   How do you get up to speed on the company's financial  
14    situation?

15    A.   Okay.  Prior -- by reviewing the ledgers and invoices  
16    provided by CASI to me.  Prior to going to the -- prior to  
17    coming to Manhattan, I interviewed the NIST grants office  
18    people and reviewed their grant files concerning CASI.

19    Q.   As part of that preparation, did you talk to anyone at  
20    CASI?

21    A.   Yes.  At CASI I talked to Dan Karron, to Joan Hayes, the  
22    CPA that he provided to, Frank Spring, a book keeper, to Bob  
23    Benedict, the project manager.

24    Q.   And is that consistent with what you usually do?

25    A.   Yes.

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Riley - direct

1 Q. Your usual practice?

2 A. Yes.

3 Q. You mentioned invoices. Can you tell us how those invoices  
4 related to what you do as an auditor?

5 A. Well, we trace -- we're provided journal entries or  
6 whatever, we're provided a list of expense, expenditures for  
7 award, we trace a sample of them, just the supporting voice or  
8 cancelled check.

9 Q. And were you able to find those invoices at CASI?

10 A. They provided some invoices. The invoices at CASI had  
11 been -- the original invoices had been scanned into the  
12 computer, and the original documents had been destroyed. And  
13 so for some of the invoices, there were multiple copies and  
14 some of them we had a hard time finding or didn't find.

15 Q. Did there come a time while you were conducting the audit  
16 that you spoke as to an individual by the name of Joan Hayes?

17 A. Yes.

18 Q. And what is your understanding as to what Joan Hayes was  
19 doing at CASI?

20 A. She had done the first year audit, they're required to have  
21 an audit by ATP, and she was -- I guess she was there to help  
22 me with my audit or to provide information about the CASI books  
23 and records or for answering questions I might have concerning  
24 the books and records.

25 Q. And what did you do with the materials that Joan Hayes

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Riley - direct

1 provided you?

2 A. I used, I used them as a source of my audit.

3 Q. And how long were you at CASI for this audit?

4 A. I think I got there on Wednesday and I left Thursday or  
5 Friday of the next week.

6 Q. Did you prepare a report after the audit?

7 A. Yes. I prepared a memo report, a short report.

8 Q. If you could find what's been marked for identification as  
9 government exhibit 60 in that pile that is in front of you?

10 A. Oh, okay. 60.

11 THE COURT: What period of time did you audit?

12 THE WITNESS: I audited the time 10/1 -- October,  
13 October 1st, 2001 through 6/30 -- 6/27, 2003.

14 Q. Do you have that document in front of you?

15 A. Yes.

16 Q. Government exhibit 60 marked for identification? Do you  
17 recognize that document?

18 A. Yes.

19 Q. Who prepared that document?

20 A. I did.

21 Q. And what is it?

22 A. It is our memo report that was prepared after the June 2003  
23 visits.

24 Q. Is that the visit you just referred to --

25 A. Yes.

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Riley - direct

1 Q. -- a moment ago?

2 A. Yes.

3 MR. KWOK: Your Honor, the government offers exhibit  
4 60?

5 MR. RUBINSTEIN: I'd like a brief voir dire, your  
6 Honor.

7 THE COURT: Yes, you may.

8 VOIR DIRE:

9 BY MR. RUBINSTEIN:

10 Q. Good afternoon, Ms. Riley.

11 A. Good afternoon.

12 Q. Now, you prepared this report from what documents?

13 A. This reports were prepared, my audit, as a result of the  
14 documents that Dr. Karron provided during that June visit.

15 Q. Dr. Karron or Ms. Hayes?

16 A. Dr. Karron, Joan Hayes, Bob Benedict, they were all there.  
17 Miss Hayes was supposed to be the representative leading me  
18 through the books and records, and she was representing Dr.  
19 Karron.

20 Q. Do you have copies of those documents?

21 A. The documents --

22 Q. That you used to --

23 A. Yes.

24 Q. -- create this report?

25 A. Yes.

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Riley - direct

1 Q. Where are they?

2 A. What -- my audit reports, my audit --

3 Q. Your what?

4 A. In my audit files. I think the document that my report,  
5 that the report was created from was provided. I mean, what --  
6 my own -- I have my audit report that I used to prepare this.

7 Q. In other words, do you make a report or create some  
8 writings to show that you used to put into this report,  
9 Government's 60?

10 A. Yes.

11 MR. RUBINSTEIN: May I approach the government, your  
12 Honor.

13 THE COURT: Yes, you may.

14 (Pause)

15 Q. Is it correct, ma'am, that you used Joan Hayes' work papers  
16 to do your -- this report?

17 A. I used the work -- the general ledgers, the cash  
18 disbursement registers, the -- whatever information, the books  
19 that were prepared by -- some things that Joan Hayes provided.  
20 The books that were being repprepared by Frank Spring. He  
21 also -- I also talked to him while I was there, to do -- to  
22 come up with the work papers from this report.

23 Q. Did you create any work papers, ma'am?

24 A. Yes, I did.

25 Q. Did you create a general ledger?

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Riley - direct

1 A. For this report?

2 Q. Yes.

3 A. No. I mean no.

4 Q. You used Joan Hayes' --

5 A. I didn't use Joan Hayes' audit for this as a, my -- the  
6 final number for this report.

7 Q. You testified that you used Joan Hayes' information,  
8 correct?

9 A. I used Joan Hayes' -- I used it, the information that Joan  
10 Hayes -- that CASI under Karron had asked Joan Hayes to provide  
11 to me for this audit.

12 Q. Did you independently check whatever documentation Joan  
13 Hayes provided for you, to you?

14 A. I did select a sample of the invoices to trace the sample  
15 of the ledger entries to trace to the invoices for this report.

16 Q. Isn't it a fact that Joan Hayes had no general ledger?  
17 There was no general ledger for CASI; is that a fact?

18 A. There were -- CASI used Quick Books, and so whatever the  
19 system of quick books there were -- there were -- there were  
20 things for Quick Books.

21 Frank Spring, I guess Frank Spring was creating a new  
22 general ledger or a new ledger system or journal entry system  
23 for CASI at the time I was there.

24 When I called to schedule the initial appointment,  
25 CASI couldn't meet with me because they were in the process of

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Riley - direct

1 redoing their books and records, and so it delayed my visit for  
2 a couple of weeks to give them time.

3 When I arrived, the new books weren't completed yet,  
4 so they were going to be completed the next day so I waited  
5 till the next day.

6 The -- I used the records that they provided and,  
7 including Joan Hayes, what Joan Hayes had provided to come up  
8 with the numbers for this. I did not take Joan Hayes' report  
9 and copy the numbers to come up with this.

10 Q. In fact, you never -- do you have, either from your own  
11 work, from Frank Spring's -- he was a book keeper of some sort?

12 A. Yes.

13 Q. Or from Joan Hayes, a general ledger, ma'am?

14 A. I know I have some summaries provided different categories,  
15 and I think there are some ledgers there. I know I have to --

16 Q. Did you do --

17 A. Yes.

18 Q. -- a reconciliation? There were checking accounts, were  
19 there not?

20 A. Yes when I -- for the audit?

21 Q. Yes. There were checking accounts, CASI had a number of  
22 checking accounts, did it not?

23 A. Yes.

24 Q. Did you do a bank reconciliation of the various bank  
25 accounts of CASI?

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Riley - direct

1 A. For this, for this audit?

2 Q. Right.

3 A. No.

4 MR. RUBINSTEIN: Your Honor, I object.

5 MR. KWOK: Sidebar, your Honor?

6 THE COURT: Yes.

7 (Continued on next page)

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Riley - direct

1 (At the sidebar)

2 MR. KWOK: Grounds?

3 MR. RUBINSTEIN: The grounds -- these are some  
4 summary, some documents that she doesn't have, that she's  
5 unaware of, and she came up with these numbers from where we  
6 will never never know because we don't have original source  
7 documents to look at, judge. She clearly relied upon other  
8 people's work to determine the cost. It's hard to believe that  
9 someone could be an auditor and not reconcile bank accounts  
10 that probably had less than 500 checks in total, for the period  
11 that we're talking about.

12 MR. KWOK: Your Honor, we offer her as an expert  
13 witness under Federal Rules of Evidence 703. Underlying  
14 documents that an expert rely upon does not have to be  
15 admissible. That's what auditors do, they don't necessarily  
16 have the underlying documents. They go to sites to look at the  
17 company books. They don't necessarily take those documents  
18 back with them after they've completed an audit. I believe  
19 that's what happened in this case, that she wasn't -- went to  
20 CASI to look at the books. She tried to verify some of it to  
21 have some confidence about the accuracy of the numbers. She  
22 issued a report. It doesn't mean she took away those documents  
23 and attached them as some sort of attachment to her report.  
24 She went there, saw things, talked to people make some  
25 determinations and issue a report. The fact that she doesn't

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Riley - direct

1 have the underlying documents should not be an issue, and she's  
2 an expert. Under Rule 703 the underlying documents --

3 THE COURT: I'm going to allow her to testify because  
4 a auditor does not have to take the records with them or copies  
5 of the records. They may have to take copies of portions that  
6 they rely on. But for illustration purposes, the auditor does  
7 not have to -- just has to use general accepted auditing  
8 methods to verify the books and accounts of the company.

9 MR. KWOK: I think that's exactly right.

10 THE COURT: It's the company, it's the company's  
11 account that the auditor is verifying.

12 MR. RUBINSTEIN: Here he didn't have accounts, Judge  
13 with all due respect, so that's why --

14 THE COURT: I don't know. I mean that's another  
15 matter.

16 MR. KWOK: You can cross on it.

17 MR. RUBINSTEIN: I don't want --

18 THE COURT: They're supposed to have an accountant,  
19 sorry, as I understood it.

20 (Continued on next page)

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Riley - direct

1 (In open court)

2 MR. KWOK: Your Honor, government offers government  
3 exhibit 60.

4 THE COURT: Government 60 is admitted in evidence.

5 (Government's Exhibit 60 received in evidence)

6 MR. RUBINSTEIN: I object to the --

7 THE COURT: I understand. I haven't read it, so I  
8 don't know what it is. It may be a valid objection after I see  
9 it.

10 MR. KWOK: Do you still have the document in front of  
11 you?

12 THE COURT: Did you use your ordinary auditing  
13 procedures in reviewing the books of --

14 THE WITNESS: Yes.

15 THE COURT: CASI?

16 THE WITNESS: Yes.

17 THE COURT: Whatever books you were presented with?

18 THE WITNESS: Yes, yes.

19 THE COURT: Those included the report of what was her  
20 name, Miss Hayes?

21 THE WITNESS: Yes.

22 THE COURT: And also materials supplied by the book  
23 keeper?

24 THE WITNESS: Yes.

25 THE COURT: Was there -- so, and they were in ledger

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Riley - direct

1 form so you could check them?

2 THE WITNESS: Things were in ledger forms.

3 THE COURT: I see, all right.

4 MR. KWOK: Thank you, your Honor.

5 Q. Ms. Riley, what's the date of this report?

6 A. July 2003.

7 Q. Directing your attention to pages three and four, let's put  
8 up page -- if we could put them side by side.

9 Ms. Riley, what are the findings that you reached in  
10 this audit report?

11 A. That, that CASI had not met the matching cost share  
12 requirement; that CASI had excess drawdowns of over \$200,000,  
13 and that they had submitted a --

14 THE COURT: Sorry, what was the first thing you said?

15 THE WITNESS: That they had not met the matching  
16 requirements of the NIST award.

17 THE COURT: Second.

18 THE WITNESS: That they had excess drawdowns of over  
19 \$200,000.

20 Q. And the third?

21 A. The third, they had filed inaccurate financial status  
22 report with us.

23 Q. Ms. Riley, let's take this one at a time now. What does it  
24 mean when you said the company had not contributed matching  
25 funds?

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Riley - direct

1 A. That they, they had not -- they had not contributed  
2 anything to the, to the NIST award.

3 Q. What are they supposed to do?

4 A. They were supposed to contribute 4.57 percent of the funds.

5 MR. RUBINSTEIN: I'm sorry, I didn't digit hear that.

6 A. Of the project cost.

7 MR. RUBINSTEIN: I missed the percentage, your Honor.

8 THE WITNESS: The 4.57 percent.

9 Q. And what in fact happened?

10 A. They hadn't contributed anything to the cost, the cost  
11 share to the project.

12 Q. And, Ms. Riley, how did you arrive at this conclusion?

13 A. By reviewing the, the records of what, and transactions of  
14 the ledgers.

15 Q. The documents provided to you by the company?

16 A. Right, the documents provided.

17 Q. The second issue you mentioned was the excessive drawdowns.  
18 Can you explain to us what that means?

19 A. They had, they had -- they had received NIST grant funds  
20 that had been spent on CASI expenses instead of the project  
21 expenses. They --

22 THE COURT: You dropped your voice, I can't hear you.  
23 You'll have to speak up.

24 THE WITNESS: They had, they had -- they had drawn  
25 down funds from NIST that were spent on CASI business expenses

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Riley - direct

1 or not allowable NIST project expenses.

2 Q. In other words, expenses not approved?

3 MR. RUBINSTEIN: Objection, your Honor, to --

4 Q. Can you explain what you mean by that?

5 THE COURT: Your objection's sustained, form of the  
6 question, Mr. Kwok.

7 MR. KWOK: I apologize, your Honor.

8 Q. What do you mean by that?

9 A. They had spent -- the money had been spent on rent or  
10 utilities or on things that were not allowed per the grant  
11 budget.

12 Q. And what is the approximate size of this excess drawdown?

13 A. 205,000.

14 Q. And again how were you able to make that determination?

15 A. From reviewing their books, from the ledgers -- from the  
16 books that were provided to us by CASI.

17 Q. Finally, you mentioned financial status reports. First of  
18 all, what are financial status reports?

19 A. Grant recipients are required to submit financial status  
20 reports quarterly to inform NIST how they spent the grant  
21 monies that they drew down for that quarter.

22 Q. And what type of information are they supposed to report on  
23 these financial status reports?

24 A. Financial status report includes the amount of matched  
25 share they provide, and the amount of cost spent with the NIST

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Riley - direct

1 grant project.

2 Q. What was your audit finding about CASI's financial status  
3 reports?

4 A. They reported the drawdown amounts they received from NIST,  
5 not the expense of what they spent drawdowns on.

6 Q. Can you --

7 A. Not the cost. They didn't -- they didn't report how they  
8 spent the grant monies.

9 Q. What, in fact, did they report?

10 A. They reported the drawdown, the monies they received.

11 Q. Any other issue with the financial status reports?

12 A. They reported a match share. They did not give a match  
13 share.

14 Q. And how were you able to make those determinations?

15 A. By reviewing the financial status reports.

16 Q. Is that what you do as an auditor?

17 A. Yes.

18 Q. Ms. Riley, what, if any, recommendations do you make in  
19 your audit report?

20 MR. RUBINSTEIN: I object to that, your Honor.

21 Q. If you could direct us to the page of the document?

22 A. It's on page five.

23 THE COURT: I don't see the relevance of that.

24 MR. KWOK: Your Honor, the audit report contains a  
25 recommendation or series of recommendations.

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Riley - direct

1 THE COURT: The --

2 MR. RUBINSTEIN: That's what I objected to, Judge.

3 THE COURT: That's what he objected to, the  
4 recommendation part.

5 MR. RUBINSTEIN: 60.

6 MR. KWOK: The relevance, the relevance is --

7 THE COURT: I don't want to hear your argument in  
8 front of the jury.

9 MR. KWOK: Could we have a sidebar?

10 THE COURT: I'll have it at the sidebar if you want to  
11 half it. It seems to me it's --

12 (Continued on next page)

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Riley - direct

1 (At the sidebar)

2 MR. KWOK: Your Honor, this audit report is the first  
3 of I believe three audit reports that this auditor prepared.  
4 She made a series of recommendations in her first audit report,  
5 and then later on she went back to the company to audit the  
6 books for a second time. And I'm intending to show that the  
7 recommendations that she made the first time were not  
8 undertaken even six months later when she went back to the  
9 company.

10 THE COURT: That has nothing to do with whether or not  
11 this man improperly used --

12 MR. KWOK: It goes to his intent, it goes to his  
13 intent because the first report told him what was wrong, and  
14 when six months later she came back, the same thing stays the  
15 same. It goes to his intent.

16 MR. RUBINSTEIN: I submit, your Honor, it doesn't go  
17 to his intent that he -- the audit report recommendation. He  
18 hired a separate accountant who submitted responses to Riley,  
19 to argue the issue of her findings, as to her number of  
20 findings. So I submit it doesn't go to his intent, and they  
21 know it. They have this, one of the exhibits.

22 THE COURT: Why can't you deal with it in other ways  
23 instead of dealing with the recommendations, which involves  
24 suspension, which doesn't seem to me to be relevant to the  
25 issue in the indictment. Why can't you raise the issue about

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Riley - direct

1 whether this report and its recommendations were, were provided  
2 to Mr., Dr. Karron, and whether she had further discussions  
3 with him. And they had another audit, et cetera, and you can  
4 get into what the subject matter is of those items at that  
5 time, not get into the recommendation of suspension by --

6 MR. KWOK: The witness is actually not going to  
7 answer, I don't believe, that I recommended the grants be  
8 suspended. She is going to say, I told him that he needs to  
9 amend his financial status report and make the cost --

10 THE COURT: But you asked for the recommendation. She  
11 isn't being asked what she told him.

12 MR. KWOK: Okay, can I ask that?

13 THE COURT: The form of your question.

14 MR. KWOK: Okay. I understand. Thank you, your  
15 Honor.

16 THE COURT: All right.

17 MR. RUBINSTEIN: Your Honor, it's past four.

18 THE COURT: Yeah, well, let's just let him get this  
19 question in.

20 MR. RUBINSTEIN: Sure.

21 (Continued on next page)

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Riley - direct

1 (In open court)

2 THE COURT: Reframe your question, Mr. Kwok.

3 MR. KWOK: Yes, your Honor.

4 Q. Ms. Riley, what, if any, actions did you suggest the  
5 company undertake to improve the negative audit findings in  
6 this report?

7 MR. RUBINSTEIN: Objection, your Honor.

8 THE COURT: What actions? I'll allow it.

9 The jury is instructed to disregard anything about  
10 negative or possibly, what have you.

11 What actions did you take with respect to Dr. Karron  
12 and CASI after you made this report? Did you provide him with  
13 a copy?

14 THE WITNESS: Oh, this report? Yes, we provided a  
15 copy of this report to CASI.

16 THE COURT: And what action did you take thereafter?

17 Q. What actions did you ask that the company take?

18 A. We asked that they reimburse NIST for the funds drawn down  
19 in excess of the federal amount, and we asked that they provide  
20 corrected financial status reports for the period of 2002 and  
21 for -- and financial status reports for the 2003 year.

22 Q. After you issued this audit report, what, if any, further  
23 involvement did you have with CASI?

24 A. We went -- we did a -- we did another audit in December of  
25 2003.

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Riley - direct

1 Q. Why do you do another audit in December of 2003?

2 A. Well, we had always planned on issuing -- this is a short  
3 report, our reports normally are longer, and provide more  
4 information in questioned costs, so we always planned on  
5 issuing another report. But CASI had obtained another CPA for  
6 the audit when we were ready to go back, and so -- it created  
7 new books and records, and so we had another site visit.

8 Q. Approximately, how much time passed between this second  
9 visit and the issuance of that report?

10 A. The second -- the report was issued in July, and the second  
11 visit was in December 2003, so about five months.

12 Q. Now, by this time had CASI undertaken any of the actions  
13 that you suggested?

14 A. They had --

15 MR. RUBINSTEIN: Objection, your Honor.

16 THE COURT: I think this may be a good point to  
17 suspend for the day, sorry. But I'm aware of obligation, other  
18 obligations that I have to carry out and have to be carried out  
19 by the attorneys. So I think we better suspend ten minutes  
20 after four. Thank you for being so prompt this morning. I  
21 hope you get off to a good start tomorrow at 9:30, and we'll  
22 see you.

23 I hope you get coffee and cookies or whatever they  
24 serve you.

25 (Jury exits the courtroom)

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864ZKAR6

Riley - direct

1 (In open court; jury not present)

2 THE COURT: Oh, did you give Ms. --all right, you can  
3 step down.

4 THE WITNESS: Okay.

5 THE COURT: Is there anything else to take up? How  
6 long will with this witness take?

7 MR. KWOK: I believe approximately 45 minutes to an  
8 hour.

9 THE COURT: It's awful long. Go ahead. I'm just  
10 trying to move this along.

11 MR. KWOK: I understand, but as I told your Honor we  
12 believe that we may be able to move this case a little bit.

13 While we're here, should we address the objection that  
14 Mr. Rubinstein just made?

15 THE COURT: Yes, you better.

16 MR. KWOK: It's our position that that goes to his  
17 intent, as Ms. Riley testifies she suggested a number of  
18 actions that the company undertake, including paying back the  
19 money. And five months later she went back to issue the more  
20 fulsome report, and at that time it was still outstanding. So  
21 I understand part of defense's argument is they did everything  
22 they could to remedy the situation, and that's simply not the  
23 case. And it goes to the defendant's state of mind. And if he  
24 intends to argue that there were some other people involved who  
25 were advising the defendant, he can cross on that. But that

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Riley - direct

1 seems to be a major primary issue in this case and we should be  
2 allowed to have the witness testify to that, in fact.

3 THE COURT: Well, testify to what went on. I follow  
4 your argument. But is there any testimony about whether  
5 there -- funds were available for the repayments that the  
6 government wanted?

7 MR. KWOK: Well, I believe there's going to be  
8 testimony that all -- the CASI money comes from the NIST grant,  
9 and the company had promised to put some cost share within, in  
10 the proposal and it was never paid.

11 THE COURT: 280,000 is a lot more than the cost share.  
12 It's a little hard to pay 280,000 and meet your cost share too.  
13 They --

14 MR. KWOK: But the witness, I believe, is going to  
15 testify that the company has paid zero, that --

16 THE COURT: What?

17 MR. KWOK: Had not paid back anything, even after the  
18 issuance of her report, not the full amount, just nothing at  
19 all. I believe that's going to be the testimony, and I think  
20 that goes to the intentional misapplication of grant funds.

21 THE COURT: They have funds; the company have funds?

22 MR. KWOK: The company does not have independent  
23 sources of funds, that's the Government's position. However,  
24 the reason they didn't have funds is because they misspent all  
25 those funds that they had already drawn down, so it's not --

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864ZKAR6

Riley - direct

1 THE COURT: How does it go to the intent?

2 MR. KWOK: Well, it goes to the intent because they  
3 didn't even try to put in the cost share that they had promised  
4 the government that they would.

5 THE COURT: They didn't have any funds, how could they  
6 do it?

7 MR. KWOK: Well, I believe Mr. Karron -- Mr.  
8 Rubinstein elicited testimony from some witnesses that at some  
9 point in time the defendant mortgaged, took out a second  
10 mortgage of his apartment to repay \$60,000.

11 THE COURT: Is the apartment owned by CASI?

12 MR. KWOK: No. It was owned by Dr. Karron personally.

13 THE COURT: The grant was to CASI, was it not?

14 MR. KWOK: It was. But if Mr. Rubinstein, as he tried  
15 to elicit from some of these witnesses, that at some point in  
16 time he, although after the period alleged on the face of the  
17 indictment, he took out a second mortgage on his home to try to  
18 pay back some of that money that he misapplied, to suggest that  
19 he tried to remedy the situation, he puts that issue squarely  
20 at play and we should be allowed to counter that suggestion.

21 THE COURT: Oh, but you're making a claim that -- I  
22 don't know what you're making. I don't know the nature of the  
23 full case, but you can't just -- the government made the grant  
24 not to Dr. Karron, but the government made the grant to CASI.

25 MR. KWOK: That's correct, your Honor. But the reason

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Riley - direct

1 the company did not have funds was because it had been already  
2 misspent all those funds.

3 THE COURT: That's all right, but they overspent.

4 MR. KWOK: I'm sorry?

5 THE COURT: They did, they overspent.

6 MR. KWOK: Intentionally misspent. The only basic  
7 point I'm trying to elicit from this witness is the defendant  
8 knew about these problems. He undertook some of the remedial  
9 actions that she recommended; namely, to revise the financial  
10 status report that we saw to correct the cost share amount that  
11 they falsely reported to the government where they didn't pay  
12 anything they had reported that they had paid ten's of  
13 thousands of dollars, but they never paid that money back, and  
14 that's an integral part of what went on at the company, that --

15 THE COURT: They didn't have the funds to pay it back.  
16 They spent it.

17 MR. KWOK: But they continued to draw -- actually,  
18 they -- I, I don't think that's quite true, because the company  
19 continued to drawdown ATP money.

20 THE COURT: But you have to convince me -- I'll have  
21 to hear it -- you'll have to convince me promptly that  
22 argument, but --

23 MR. KWOK: As I said a moment ago, I believe Mr.  
24 Rubinstein had suggested in the past two days that at some  
25 point in time Dr. Karron took out a second mortgage on his home

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Riley - direct

1 to try to pay back the money that he --

2 THE COURT: Tell me where, show me in the record. I  
3 don't recall him saying that in this case on trial. If he --  
4 maybe one of your cohorts does. I don't remember him saying  
5 that. I'm aware of the fact that there was a mortgage, but --

6 MR. KWOK: We will go get the transcript.

7 THE COURT: I'm not sure about this whole theory of  
8 this evidence proving the -- being admissible. So you better  
9 have something for me in the morning.

10 MR. KWOK: We will do that. And --

11 THE COURT: In writing so I can read it, or tonight if  
12 you want to read the cases that you're relying on.

13 MR. KWOK: Very well, your Honor. And in the  
14 alternative, I will go back to revisit the testimony that I  
15 intend to elicit and maybe we can avoid the whole problem by  
16 just moving quickly through the audit reports without dwelling  
17 too much on the recommendation portions of the report, because  
18 there's other ways we can show what we need to show.

19 THE COURT: I'm having trouble with this whole theory  
20 that the failure to repay may be evidence of his intent in  
21 mispending the money.

22 MR. KWOK: Even if --

23 THE COURT: I'm having trouble with that, so you'll  
24 have to give me cases, maybe Mr. Rubinstein's office can too,  
25 since he's got his assistant here today.

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Riley - direct

1 MR. RUBINSTEIN: We have another question that might  
2 help that, Judge, but that's when we finish with this first.  
3 It's more in the housekeeping nature.

4 MR. KWOK: I will do some research and try to give  
5 your Honor case law.

6 But the only other point I would make on this point is  
7 that even if it does not go to his intent, it goes to the basic  
8 facts of what happened to the money. She's going to --

9 THE COURT: It doesn't go to basic. Whatever happened  
10 to the money, happened to the money. There may be, there may  
11 be clarification as to. But the conversations with Dr. Karron  
12 don't have anything to do with what happened to the money, as I  
13 understand it. I mean, she may have gotten further, further  
14 materials from the new auditor, the new accountants or what  
15 have you, but I'm having trouble with the, this element of the  
16 case.

17 MR. KWOK: We'll submit a letter to the Court.

18 THE COURT: I don't know the other witnesses you have.

19 MR. RUBINSTEIN: Your Honor, in order to facilitate  
20 what your Honor suggested of hopefully helping the Court in  
21 resolving the issue, there is a card that the security took  
22 that permits us to use the internet, and we would need a --  
23 it's a Sprint PCS card that -- in other words, they don't let  
24 you bring in a computer that gives you access to the internet,  
25 but actually that would be --

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Riley - direct

1 THE COURT: Why do we need the internet?

2 MR. RUBINSTEIN: We want to be able to go into Westlaw  
3 and, you know, do some research and stuff.

4 THE COURT: Oh-- don't -- better not do it here,  
5 that's all.

6 MR. RUBINSTEIN: Okay, Judge. Thank you.

7 THE COURT: All right. Are we all done?

8 MR. KWOK: Yes, thank you.

9 (Adjourned to June 5, 2008 at 9:30 a.m.)

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10 GOVERNMENT EXHIBITS

11	Exhibit No.	Received
12	47 . . . . .	325
13	40, 40A, 41, 41A, 42, 42A, 43, 43A, 44, 45 and	333
14	48 . . . . .	340
15	2000 and 2001 . . . . .	451
16	[Exhibits]*[received] . . . . .	461
17	900 . . . . .	461
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19 DEFENDANT EXHIBITS

20	Exhibit No.	Received
21	F . . . . .	433

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23

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1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

3

4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

5

6 Defendant.

6

7 -----x

7

8

8 June 5, 2008

9 9:20 a.m.

9

10

10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

12

12 District Judge

13

13

14 APPEARANCES

14

15 MICHAEL J. GARCIA

15 United States Attorney for the

16 Southern District of New York

16 BY: STEVEN KWOK

17 CHRISTIAN EVERDELL

17 Assistant United States Attorneys

18

18 RUBINSTEIN & COROZZO, LLP

19 Attorneys for Defendant

19 BY: RONALD RUBINSTEIN

20

20 Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21 Kirk Yamatani, U.S. Dept. of Commerce

22

23

24

25

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1 (In open court; jury not present)

2 THE COURT: We have several matters to take up.

3 MR. RUBINSTEIN: First of all, I want to tell the  
4 Court that Dr. Karron is here. I picked him up and drove him  
5 here myself, as I promised your Honor I would. He's doing  
6 something --

7 THE COURT: He's here?

8 MR. RUBINSTEIN: Yes, he is. I brought him here.  
9 Much to my chagrin, I picked him up and deposited him. But  
10 he's making a call for me now, so he's -- he consented to be  
11 excused during the legal, any legal arguments we make here.

12 THE COURT: You consent to his absence?

13 MR. RUBINSTEIN: Yes, your Honor.

14 THE COURT: For these arguments? All right, thank  
15 you.

16 Now, we had some issues about whether the Government's  
17 Exhibit 2,000, and 2,001 were 3500 material that were not  
18 produced to the defendant.

19 MR. RUBINSTEIN: Yes, your Honor. And the reason for  
20 that is that when I was cross-examining --

21 THE COURT: It came up in cross as a result of your  
22 cross-examination.

23 MR. RUBINSTEIN: Yes, because I had never been  
24 provided with those documents, so I was totally unaware.

25 THE COURT: Why is it 3500 material?

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1           MR. RUBINSTEIN: Well, just as all the other financial  
2 statement revisions was 3500 material that was turned over of  
3 this witness.

4           THE COURT: It's not a financial statement, as I read  
5 it. But why is it 3500 material?

6           MR. RUBINSTEIN: It's the same as -- it was a revised  
7 financial statement. The witness testified that she had  
8 received financial statement -- in other words, I showed that  
9 the financial statements that the government had in evidence  
10 were submitted August 13th, 2003. The witness said that she  
11 had seen earlier ones. We didn't have any earlier ones. We  
12 had the ones August 13th, and I -- and she said she had them in  
13 her file. So obviously the government has a whole file that  
14 they never turned over, never made available either on Rule 16  
15 or under 3500 material as to this witness, and then they  
16 introduce it. And it's my fault because I was doing something  
17 else at the time, and I should've known when they came up with  
18 a number like 2,000, that's what got my interest, it was a new  
19 number sequence in this case and --

20           THE COURT: Well, let me hear from the government.

21           MR. EVERDELL: Well, your Honor, a few things. I  
22 think your Honor's right, I don't see how these are her  
23 statements. These are revised financial reports that somehow  
24 she recalls seeing, so I don't see how these become her prior  
25 statements.

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1           THE COURT: Well, they're proposed -- what were they  
2 exactly? They're proposed financial statement revisions, is  
3 that what they are?

4           MR. EVERDELL: These were these financial status,  
5 quarterly financial status reports.

6           THE COURT: Financial, proposed financial status  
7 reports.

8           MR. EVERDELL: Right.

9           THE COURT: Which were not approved.

10          MR. EVERDELL: There, as the witness testified, there  
11 was some discussion about proposed financial status reports  
12 with the defendant. And she recalls seeing these and having  
13 other, other proposed revised financial status reports that she  
14 saw in the grant file. So these, I don't think, are her  
15 statements. And plus the fact that I believe the issue is  
16 waived as well because defense counsel didn't object when I  
17 showed it to him and only came up after the fact, so.

18          THE COURT: Well, these are not statements by her or  
19 do they contain statements by her? If they're witness  
20 statements, I have a problem. I remember there was some  
21 notation on one of them as I recollect.

22          MR. EVERDELL: There was some are arithmetic notations  
23 and there was a notation down at the bottom of one of them,  
24 that's correct. I'm not sure if it came out whose those were.

25          THE COURT: Hers, I believe --

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1 MR. EVERDELL: Yeah.

2 THE COURT: -- is the testimony.

3 MR. EVERDELL: In addition, your Honor, for the 3500  
4 material we wrote a letter to defense counsel saying that,  
5 because discovery was so voluminous in this case, that if we  
6 had already provided it in discovery, we weren't going to  
7 provide it again at separate 3500 material. We did provide a  
8 copy of the grant file in discovery, and you know, I mean --

9 THE COURT: You did provide the grant file? I thought  
10 they were included.

11 MR. EVERDELL: It would have. Your Honor, I confess  
12 that when we tried to look through the discovery last night to  
13 see if we can see these exact documents that we showed  
14 yesterday, the discovery copy, the Bates stamped discovery  
15 copy, I confess we couldn't find them in the Bates stamped  
16 discovery copy.

17 The issue is that the grant file was copied several  
18 years ago when the agents went to D.C. to copy the grant file,  
19 that was what we produced. And, apparently, these were not  
20 copied, for whatever reason.

21 The agents at the table had her own copy of the grant  
22 file that she requested some, a little bit later, just because  
23 the copy portion that we produced was -- it wasn't organized as  
24 effectively as she would have liked it to be, so she just  
25 requested another copy of it. That's what we were using

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1 yesterday when I was told of these documents. So I had assumed  
2 that because we had produced the grant file, that those  
3 documents were also included in the grant file. Apparently, in  
4 my review of the discovery last night, I don't see them.

5 But I raise it that, you know, this only came up on  
6 cross-examination as the defendant was trying to apparently  
7 making it seen like Ms. Snowden wasn't doing her job properly.  
8 I hadn't intended to bring these to the jury's attention at  
9 all. And plus this is a conversation she had with the  
10 defendant himself, so this isn't really any great surprise on  
11 the part of the defendant. She's testifying about discussions  
12 she had with him about additional revisions to the financial  
13 status reports. So this isn't really a great surprise to him  
14 or shouldn't have been. So while I admit I think because of  
15 the review of discovery last night I can't say for certain that  
16 these particular two documents were turned over to the  
17 defendant in discovery, I don't think this is any great  
18 surprise to the defendant. And given the nature of how the  
19 documents came up and the fact that defense counsel didn't  
20 object when we first tried to introduce them, I don't think  
21 this is -- should be an issue.

22 THE COURT: He didn't object until after they were  
23 admitted in evidence.

24 MR. EVERDELL: Correct, your Honor.

25 THE COURT: I don't know what the law is on that,

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1 under those circumstances.

2 MR. RUBINSTEIN: Your Honor, I would have no problem  
3 if your Honor wanted to give a limiting instruction that Rule  
4 3500 requires the government to turn over all the material  
5 about -- that a particular witness who was going to testify and  
6 that, you know, and it wasn't done as to Exhibit 2,000 and  
7 that's --

8 THE COURT: Those documents were overlooked? Is that  
9 what you want?

10 MR. EVERDELL: Your Honor, I don't -- until yesterday  
11 when this issue came up, I don't think we knew that those  
12 documents, those notations were Hope Snowden's notations. We  
13 saw them in the grant file because it looked like these were  
14 revisions and we wanted to, because the issue came up on  
15 cross-examination, it was clear that there were other revisions  
16 to the financial status reports. And so we thought, okay, this  
17 is a copy of the grant file, we thought we produced the grant  
18 file so we're going to introduce these 'cause we don't want it  
19 to look as if Hope Snowden wasn't doing her job, which is  
20 clearly what the --

21 THE COURT: Telling the truth is --

22 MR. EVERDELL: Wasn't telling the truth, which is  
23 exactly what the defense counsel was I think trying to do with  
24 that cross-examination. So it was done in good faith. I don't  
25 think a limiting instruction to that effect is appropriate

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1 here. Plus the issue of waiver, I mean these were things that  
2 we showed to the defendant and he did not object to it. He had  
3 the opportunity to review them before I elicited them from the  
4 from the witness, so.

5 MR. RUBINSTEIN: That's not exactly accurate, your  
6 Honor. They didn't give me a copy. They didn't hand me a  
7 copy.

8 THE COURT: They --

9 MR. RUBINSTEIN: They --

10 THE COURT: They did show them to you, Mr --

11 MR. RUBINSTEIN: No. They offered to show them and I  
12 did not look at them. It's my fault.

13 THE COURT: I saw them show them to you.

14 MR. RUBINSTEIN: I didn't look at --

15 THE COURT: Whether you examined them is another  
16 issue.

17 MR. RUBINSTEIN: I conceded that, Judge.

18 THE COURT: What?

19 MR. RUBINSTEIN: I conceded that from the outset, from  
20 yesterday, today. I'm not suggesting they didn't offer it to  
21 show me them, okay. And as I said, I was late in making the  
22 objection. You know, just as the defendant's not entitled to a  
23 perfect trial, he's not entitled to a perfect lawyer.

24 THE COURT: I want to see those documents, but I want  
25 to -- and then I want to consider what to do. Because I think

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1 it's acknowledged that the two documents were apparently not at  
2 the discovery materials turned over.

3 Now whether, whether the discovery materials -- and I  
4 think the witness testified, I may be wrong, that the  
5 handwritten notations on the document were hers. So I suppose  
6 they could be considered prior statements of a witness.

7 MR. EVERDELL: Your Honor, I mean the written  
8 statements there were not the subject of testimony. The  
9 testimony was --

10 THE COURT: That's true.

11 MR. EVERDELL: -- was did she in fact have discussions  
12 with the defendant about additional revised financial status  
13 reports.

14 THE COURT: They weren't the subject of her direct  
15 testimony.

16 MR. EVERDELL: Correct.

17 THE COURT: She was responded to on cross-examination.

18 MR. EVERDELL: Exactly. I did not intend to get into  
19 this at all until Mr. Rubinstein was, apparently, trying to  
20 test her credibility and I felt like this was something I  
21 needed to address on redirect.

22 The issue really was did she have discussions with the  
23 defendant about additional revised financial status reports,  
24 which she testified to before I even introduced the documents.  
25 She said, yes, I had discussions with him; yes, there were

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1 further revisions. I was simply trying to find documentary  
2 evidence because the defense counsel was trying to -- was  
3 asking the witness, did you make any notes. She said yes. So  
4 I looked to see if we had evidence of this, and it appears  
5 there was. Now, it's true that these were not -- apparently  
6 were not turned over in discovery, but --

7 THE COURT: I think you misspoke about any notes. But  
8 what he asked her was if there had been any other financial  
9 status reports in between the two, the financial status report  
10 of the first one and the so-called revised one of 8/13  
11 something or other.

12 MR. EVERDELL: That's correct, your Honor.

13 THE COURT: Well, I want to consider this and see  
14 what, if anything, should be done about it.

15 MR. EVERDELL: And your Honor, additionally --

16 THE COURT: Now let's -- we've got a jury waiting  
17 here. We got another problem.

18 Mr. Juror number eight will not be in, Mr. Naveen  
19 sprained his ankle and has difficulty walking and will not be  
20 in today, so we'll have to replace him.

21 All right. Now, there's another issue we have that  
22 came at the end of the day, right?

23 MR. KWOK: That's correct. I will not press that line  
24 of questioning, your Honor.

25 THE COURT: Not refer to it in summation either; not

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1 make that argument in summation.

2 MR. KWOK: Certainly. But the only other thing I want  
3 to flag for the Court, I believe your Honor now has a proposed  
4 new stipulation which I will read into the record before we  
5 call the witness.

6 THE COURT: All right. Otherwise are we ready?

7 MR. KWOK: The government is ready.

8 MR. RUBINSTEIN: Defense is ready, your Honor. If I  
9 can just run out and so I don't have to run out later.

10 THE COURT: Maybe I should too.

11 MR. EVERDELL: Should we get the witness, your Honor?

12 THE COURT: You better have the witness ready.

13 (Recess)

14 THE COURT: Please be seated.

15 All right, we're bringing in the jury.

16 (Jury entering)

17 THE COURT: Good morning. Please be seated. Good  
18 morning, ladies and gentlemen.

19 THE JURY: Good morning.

20 THE COURT: Mr. Monteagudo received a message from  
21 Mr. Naveen John, juror number eight. He sprained his ankle  
22 yesterday and cannot walk this morning, and as a result he will  
23 not be in today. And, accordingly, I'm going to ask Ms. Chang,  
24 the first alternate juror, to take his place as juror number  
25 eight and we'll proceed with the trial, and I guess we're still

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1 on the direct examination with Ms --

2 MR. KWOK: Ms. Riley, your Honor.

3 THE COURT: I'm sorry.

4 MR. KWOK: Ms. Riley.

5 THE COURT: Ms. Riley, yes.

6 MR. KWOK: May I proceed?

7 THE COURT: Ms. Riley, you're reminded you're still  
8 under oath. The jury is reminded that on the succeeding day  
9 when the witness takes the stand, I'm obliged, as a matter of  
10 court procedure, to remind them they're still under oath.  
11 Please.

12 MR. KWOK: Thank you, your Honor.

13 BELINDA RILEY,

14 called as a witness by the government,

15 having been previously sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KWOK:

18 MR. KWOK: Your Honor, before I proceed with the  
19 direct examination, I would like to read a proposed stipulation  
20 into the record.

21 THE COURT: All right, sir.

22 MR. KWOK: United States of America versus Daniel B.  
23 Karron, defendant S2 07 Crim. 542. It is hereby stipulated and  
24 agreed by and among the United States of America by Michael J.  
25 Garcia, United States Attorney for the Southern District of New

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865zkar1

Riley - direct

1 York, Steve Kwok and Christian Everdell, Assistant United  
2 States Attorneys of counsel, and defendant Daniel B. Karron, by  
3 and with the consent of his attorney Ronald Rubinstein,  
4 Esquire, paragraph three of Government exhibit 900 is amended  
5 to read as follows: The documents marked as government exhibit  
6 0 are the credit card statements for the American Express cards  
7 of Computer Aided surgery, Inc. CASI, and Daniel B. Karron, the  
8 defendant, from in or about October 2001 to in or about April  
9 of 2003.

10 It is further stipulated and agreed that government  
11 exhibit 90 and this stipulation marked for identification as  
12 government exhibit 900A, may be received in evidence as  
13 government exhibits at trial, and it is signed New York, New  
14 York, June 5th, 2008 on behalf of the United States by Steve  
15 Kwok and on behalf of Daniel B. Karron, Ronald B. Rubinstein,  
16 Esquire.

17 THE COURT: All right, Government's exhibit 90 is  
18 admitted in evidence. I think Government's exhibit 900 was  
19 admitted in evidence.

20 THE DEPUTY CLERK: This is 900A?

21 THE COURT: Excuse me. Government's exhibit 900A is  
22 admitted in evidence.

23 (Government's Exhibit 900A received in evidence)

24 MR. KWOK: Thank you, your Honor.

25 BY MR. KWOK:

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Riley - direct

1 Q. Good morning, Ms. Riley.

2 A. Good morning.

3 Q. Before we broke yesterday you mentioned you went back to  
4 CASI to do a second audit; is that right?

5 A. Yes.

6 Q. When did you go back to that, to do that second audit?

7 A. In December of 2003.

8 Q. So how long was that between your first audit and this  
9 time?

10 A. About five months.

11 Q. Where did you go to conduct this second audit?

12 A. To his accountant, Mel Spitz's office in Manhattan.

13 Q. In conducting your second audit, what materials did you  
14 examine?

15 A. I examined the books and records provided by Mel Spitz.

16 Q. So are these materials that you examined for the second  
17 audit different or the same from the materials you relied on  
18 the first time?

19 A. It was different ledgers. The invoices or whatever would  
20 been the same, but the ledgers were new.

21 Q. Did there come a time when you completed this second audit?

22 A. Yes.

23 Q. When was that, approximately?

24 A. I think the report was probably issued in February or  
25 March 2004.

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Riley - direct

1 Q. And what period did your second audit cover?

2 A. It covered the period 10/1, 2001 through June 27th, 2003.

3 THE COURT: What date in 2003?

4 THE WITNESS: June 27th, when the award was suspended.

5 Q. Did you issue a report after the second audit?

6 A. Yes.

7 Q. Ms. Riley, if you could take a look at the stack of  
8 documents in front of you. I believe there's one marked for  
9 identification government exhibit 61?

10 A. Yes.

11 THE COURT: 61 for identification?

12 MR. KWOK: That's correct, your Honor.

13 THE COURT: It's not admitted in evidence yet, ladies  
14 and gentlemen.

15 Q. Do you recognize this document, Ms. Riley?

16 A. Yes.

17 Q. Who prepared that document?

18 A. I did.

19 Q. And what is it?

20 A. It's the draft report that we issued as a result of the  
21 December 2003 review of CASI's records.

22 Q. Is that the report you just referred to?

23 A. Yes.

24 MR. KWOK: Government offers exhibit 61.

25 MR. RUBINSTEIN: Your Honor, except for conclusions, I

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Riley - direct

1 have no objection, your Honor.

2 THE COURT: Exhibit 61 is admitted in evidence. It's  
3 kept in the regular course of business by the agency; is that  
4 correct?

5 THE WITNESS: I'm sorry, what?

6 THE COURT: This report is kept in the regular course  
7 of business by the Office of Inspector General?

8 THE WITNESS: Yes, yes.

9 THE COURT: And it's the regular course of business to  
10 keep these, this report --

11 THE WITNESS: Yes.

12 THE COURT: -- in its records?

13 THE WITNESS: Yes.

14 THE COURT: All right, I'll allow it.

15 MR. KWOK: Thank you, your Honor.

16 THE COURT: Exhibit 61 is admitted in evidence.

17 (Government's Exhibit 61 received in evidence)

18 Q. Now, Ms. Riley, I direct your attention to page seven of  
19 that document. If you could put that up on the screen.

20 THE COURT: What I have is page seven -- Mr -- I don't  
21 have a page seven to that document, 61. I have -- I have in  
22 61 --

23 MR. KWOK: You have to keep flipping to -- the initial  
24 pages don't have numbers on it, and then there are little one,  
25 little two, and then --

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Riley - direct

1 THE COURT: Those are marked draft.

2 THE WITNESS: Yes.

3 MR. KWOK: Yes.

4 THE WITNESS: It's a draft report.

5 THE COURT: It's not a final report.

6 THE WITNESS: Right. The final --

7 MR. KWOK: I can -- I'm happy to explain that at  
8 sidebar.

9 THE COURT: Not you explain it, let the witness  
10 explain it.

11 MR. KWOK: Okay. I will lay some foundation, your  
12 Honor.

13 THE COURT: She's the witness, not you.

14 Q. Ms. Riley, can you explain the difference between a draft  
15 report and a final report?

16 A. Yes. We issue the draft -- we issue a draft report and  
17 give the grantee an opportunity to respond to our findings and  
18 any errors we may have in our numbers, our wordings or any --  
19 and then we issue a final report and include their response to  
20 our draft report.

21 Q. Thank you.

22 THE COURT: So you want page seven of the draft report  
23 that's accompanying the --

24 MR. KWOK: Yes.

25 THE COURT: -- that is attached to exhibit 61?

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Riley - direct

1 MR. KWOK: That's correct, your Honor, page seven of  
2 the draft report, exhibit 61, we're just waiting for it to be  
3 up on the screen. Can we blow that up.

4 Q. Ms. Riley, what are the findings that you reached?

5 MR. RUBINSTEIN: I object to this. There's no  
6 foundation.

7 THE COURT: Objection overruled.

8 A. We determined that the government was -- we found that the  
9 government -- the refund was due the federal government of  
10 \$582,000, approximately.

11 Q. Now, if we could go two pages after that. It's appendix  
12 one, page one of eight. What are some of the examples of the  
13 funds that you disallowed?

14 A. Funds that were used to pay for rent, internet --

15 MR. RUBINSTEIN: I can't hear the witness, your Honor.  
16 I'm sorry.

17 THE COURT: I'm sorry, I'm sorry?

18 MR. RUBINSTEIN: I can't -- I couldn't hear the  
19 witness.

20 THE WITNESS: I'm sorry.

21 THE COURT: I think you're too -- I think you're too  
22 close -- Robert is not here to.

23 THE WITNESS: Oh, if I sit back, is this better?

24 MR. RUBINSTEIN: Thank you.

25 THE COURT: It's better if you speak up.

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Riley - direct

1 THE WITNESS: Okay.

2 THE COURT: All right.

3 THE WITNESS: It sounds loud to me. Okay.

4 Monies that were spent for rents, internet --

5 THE COURT: Keep talking into the mike. As soon as  
6 you start turning looking around to the Court Reporter your  
7 voice gets muffled.

8 THE WITNESS: Okay.

9 A. For rent, internet, utilities, and certain other CASI  
10 expenditures.

11 Q. And I direct your attention to page eight now of the  
12 report, the one page previous to the one we just looked at.  
13 Directing your attention to the third full paragraph. What  
14 finding did you make there?

15 A. That on October 26 CASI received grant funds of 100 and --

16 THE COURT: October 26 of what year?

17 THE WITNESS: Oh, of 2001, CASI received grant funds  
18 of \$150,000, and they immediately wrote Dr. Karron a check for  
19 \$75,000 as an advance on salary and paid back rent of \$2,000 a  
20 month for the period, January 2000 through September of 2000,  
21 which was prior to the award of the grant.

22 Q. And what did you conclude about these series of  
23 transactions?

24 MR. RUBINSTEIN: Objection, your Honor.

25 THE COURT: I think you need --

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Riley - direct

1 MR. KWOK: Your Honor --

2 THE COURT: Objection -- I think you need a foundation  
3 question, Mr. Everdell. First, did she -- was this based on  
4 any --

5 MR. KWOK: Certainly, your Honor.

6 THE COURT: On what did she base this conclusion.

7 Q. Ms. Riley, before you conducted this audit, did you have  
8 occasion to review the terms and conditions of the ATP grant?

9 A. Yes, I did.

10 Q. And what did you conclude about these series of  
11 transactions?

12 A. The rent would be an indirect cost, which would be  
13 unallowable on that, but that was also prior to the award so it  
14 would not be allowed.

15 THE COURT: Robert, would you fix the mike so it's in  
16 the right spot here. We're having trouble hearing her voice.  
17 Just so she gets up to it close and then it's all --

18 THE WITNESS: Do I need to sit back?

19 THE DEPUTY CLERK: She's also got -- looking at  
20 documents so it's sort of hard. She's up closer. It's okay.  
21 Keep --

22 THE WITNESS: Okay.

23 THE DEPUTY CLERK: Right where you are. I'm going to  
24 move your water right here.

25 THE WITNESS: Okay.

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Riley - direct

1 THE DEPUTY CLERK: You should be okay. It's okay.

2 Q. I'm sorry, can you continue with the answer? The question  
3 was, what did you conclude about the series of transactions?

4 A. That the rent payments were -- would have been preaward  
5 cost and not allowable, but they were also indirect costs that  
6 they would not have been allowable costs. And the advance, we  
7 don't, we don't -- we considered this like that he used it as a  
8 personal loan account. You're not -- you don't, you don't pay  
9 advance salary out of grant cost.

10 Q. If you could speak up, Ms. Riley, that would be very  
11 helpful.

12 A. Okay.

13 Q. Ms. Riley, do you know whether the grant -- the defendant  
14 gave a written response to your audit report?

15 A. Yes, he did.

16 Q. And how do you know that?

17 A. Because it was sent to me, or to our office.

18 Q. And did you issue a final report after reviewing the  
19 defendant's response?

20 A. Yes, we did.

21 Q. I'm showing you what is next in the pile, I believe, marked  
22 for identification government exhibit 62. Do you know what  
23 that is?

24 A. Yes.

25 Q. What is it?

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Riley - direct

1 A. It's our final report that we issued.

2 Q. Who prepared the document?

3 A. I did.

4 MR. KWOK: Government offers exhibit 62.

5 MR. RUBINSTEIN: Same limited objection, your Honor,  
6 as to opinions of this witness.

7 THE COURT: This is kept in the regular course of  
8 business by the agency.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. I'll allow it, 62 in evidence.

11 (Government's Exhibit 62 received in evidence)

12 Q. Ms. Riley, after this audit report, exhibit 62, did you  
13 conduct a third analysis of CASI's bank accounts?

14 A. Yes, I did.

15 Q. What did you do?

16 A. After I was provided the bank account records for the, for  
17 the year-and-a-half period of the grant, and I scheduled out  
18 them, the checks by payee, amount, date, and the electronic  
19 funds transfers were taken from the bank statements.

20 Q. What bank are we talking about?

21 A. Chase.

22 Q. And these bank statements belonged to what person or what  
23 entity?

24 A. CASI.

25 Q. Did you also review the bank statements of Dr. Karron

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Riley - direct

1 personally?

2 A. Yes, I did.

3 Q. How about Dr. Karron statements?

4 A. Yes, the American Express statements for the CASI business  
5 account and for one of the accounts for Donald Karron only.

6 Q. Did you review any invoices?

7 A. Yes, there were some invoices.

8 Q. Did CASI have one account or multiple accounts?

9 A. There were four CASI business accounts.

10 Q. And how did you treat these multiple accounts in your  
11 analysis?

12 A. In my analysis --

13 THE COURT: What kind accounts are we talking about?

14 THE WITNESS: Checking.

15 THE COURT: Checking accounts. There were four  
16 checking accounts?

17 THE WITNESS: Yeah, yeah. There may have been --  
18 yeah, there were four checking accounts, and then a personal  
19 account had a savings account and a personal account.

20 Q. And how do you treat CASI's multiple business accounts?

21 A. I treated them as one bank account.

22 Q. And why did you do that?

23 A. Because all -- the majority of the deposits were from the  
24 NIST ATP grant, and there was a lot of transfers between the  
25 accounts.

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Riley - direct

1 Q. Now, in terms of the information that you relied on, how  
2 does this analysis differ or the same from your, the materials  
3 you relied on in your audit reports?

4 A. The audit report I relied on the whatever books and records  
5 or ledgers that were provided by CASI. For the analysis of the  
6 checking account, I was relying just on the checks.

7 Q. Ms. Riley, I'm showing you -- in, front of you the box  
8 marked already in evidence as government exhibit 80.

9 THE COURT: I'm confused, Mr. Kwok. If we used the  
10 exhibit numbers, I'd be much happier, but when you fail to use  
11 the exhibit numbers I think it's confusing and not clear to the  
12 jury what the witness is talking about.

13 MR. KWOK: I will use the exhibit number. I  
14 apologize, your Honor.

15 THE COURT: All right.

16 Q. I'm directing your attention, Ms. Riley, to exhibit 80,  
17 which is the box in front of you, if you could stand up?

18 THE COURT: Exhibit 80 isn't admitted in evidence.

19 MR. KWOK: It's by stipulation, your Honor.

20 THE COURT: Oh, all right.

21 A. Okay. Yes.

22 THE COURT: And what does exhibit 80 consist of so  
23 that you don't -- we know what we're talking about?

24 THE DEPUTY CLERK: Move those folders.

25 BY MR. KWOK:

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Riley - direct

1 Q. Ms. Riley, what is exhibit 80?

2 A. 80 -- exhibit 80 is Dr. Karron's personal checking accounts  
3 and savings account.

4 Q. How about government exhibit 81?

5 A. 81 is the business checking accounts, the four business  
6 checking accounts.

7 THE COURT: Four checking?

8 THE WITNESS: Yes, sir. It's through -- there is a  
9 CASI business account, and then there's NIST project business  
10 account, and then there's a CASI corporation -- CASI has  
11 changed its -- become an LLC Corporation, and there's, so  
12 there's also a NIST LLC corporation account.

13 Q. So, and what is government --

14 A. They were just changing different entities.

15 Q. And what is government exhibit 90, 90?

16 A. 90?

17 Q. It's to your right?

18 THE COURT: Just so I'm clear, in 81 there are four,  
19 those four accounts were in 81, am I right, Ms. Riley?

20 THE WITNESS: I'm sorry, what?

21 THE COURT: The four accounts that you just mentioned  
22 the CASI business account, the CASI LLC business account, the  
23 NIST --

24 THE WITNESS: NIST --

25 THE COURT: CASI NIST accounts and CASI's NIST LLC

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1 account --

2 THE WITNESS: Yes.

3 THE COURT: -- are all part of exhibit 81, is that  
4 correct?

5 THE WITNESS: Yes, yes.

6 THE COURT: All right.

7 THE WITNESS: Okay.

8 Q. Now turning to exhibit 90 already in evidence, what is  
9 that?

10 A. This is the American Express statements for the CASI  
11 accounts.

12 THE COURT: It's a what?

13 THE WITNESS: American Express account.

14 THE COURT: In the name of?

15 THE WITNESS: It's -- there are various American  
16 Express accounts and --

17 THE COURT: In whose name?

18 THE WITNESS: The Computer Aided Surgery, and Dr --  
19 there's one in D. B. Karron.

20 THE COURT: Dr. Karron?

21 THE WITNESS: Yes.

22 THE COURT: That's two.

23 THE WITNESS: Oh, they're the same. They're --  
24 they're various account numbers with the same name.

25 THE COURT: They're various --

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Riley - direct

1 THE WITNESS: Doctor D. B Karron Computer Aided  
2 Surgery, there is an account number three --

3 THE COURT: I couldn't understand you.

4 THE WITNESS: Doctor D. B. Karron Computer Aided  
5 surgery, there's an account number 37834901721500, and also  
6 account 378349017217006.

7 THE COURT: And in whose name is that?

8 THE WITNESS: Doctor D. B. Karron, Computer Aided  
9 Surgery.

10 THE COURT: Any other accounts in the American  
11 Express.

12 THE WITNESS: Yes.

13 THE COURT: Exhibit 90?

14 THE WITNESS: Also for Dr. D.B. Karron --

15 THE COURT: I'm sorry?

16 THE WITNESS: Another one under that same name is  
17 378349017216008.

18 THE COURT: In the name of?

19 THE WITNESS: Dr. D.B. Karron, Computer Aided Surgery.

20 THE COURT: Any others?

21 THE WITNESS: There is also under Dr. D.B. Karron  
22 Computer Aided Surgery 378349017218004.

23 THE COURT: Any others?

24 THE WITNESS: These two --

25 THE COURT: I'm sorry?

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Riley - direct

1 THE WITNESS: This, these -- also in this there are  
2 sections that are for other people like for Lee Gurfein where  
3 it's not --

4 THE COURT: Tell us which ones you reviewed.

5 THE WITNESS: Okay. So then also there's a personal  
6 Dr. D.B. Karron for 371543567491006, and one for Dr. D.B.  
7 Karron 372893053176002.

8 THE COURT: And what about the ones for the other  
9 people you say are part of 90?

10 THE WITNESS: They're in -- let's see. They're in  
11 part of the statement.

12 THE COURT: I'm sorry?

13 THE WITNESS: They're like the one, like account  
14 number Dr. D.B. Karron.

15 THE COURT: We can't remember those numbers so you  
16 have to tell us what you're doing.

17 THE WITNESS: Okay. So included in some of the  
18 accounts there's a, for Dr. D.B. Karron, Alicia Gurfein and  
19 Charles Desala, credit cards under the account number or the  
20 main account number.

21 THE COURT: You mean were separate credit cards issued  
22 under the --

23 THE WITNESS: Under the same billing account number  
24 they had -- yeah, they had three -- this one credit card  
25 account number had three separate credit cards that appeared on

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1 that bill for that account number, so it's associated with.

2 THE COURT: I see. Who are they attributed to?

3 THE WITNESS: Alicia Gerfein and Charles Desala.

4 Q. Ms. Riley --

5 MR. KWOK: Sorry, your Honor.

6 THE COURT: Anything else?

7 Q. Yes. Ms. Riley, now I'm showing you government Exhibit  
8 100. Do you recognize what that is, already in evidence?

9 A. Yes. It's invoices from Datavisioin.

10 Q. How about government Exhibit 101?

11 THE COURT: What are invoices from data bases?

12 THE WITNESS: Invoices from Datavisioin is a --

13 THE COURT: Datavision.

14 THE WITNESS: It's a computer company.

15 THE COURT: All right. Supplier of some sort?

16 THE WITNESS: Yes, equipment supply, equipment person.

17 THE COURT: All right.

18 Q. Government Exhibit 101, do you have that document in front  
19 of you?

20 A. Yes.

21 Q. Do you recognize it?

22 A. It's invoices from Homefront Hardware.

23 Q. Are those invoices as well?

24 A. Yes.

25 Q. How about government Exhibit 102 already in evidence?

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Riley - direct

1 A. 102, invoices from General Computer Service.

2 Q. Government exhibit 103 already in evidence?

3 A. Invoices from Silicon Graphics Incorporated.

4 Q. Government Exhibit 104?

5 A. Invoices from Silicon City.

6 Q. Now, Ms. Riley, before I showed you those documents, had  
7 you looked at those documents before?

8 A. Yes.

9 Q. And what did you do with those documents?

10 A. I reviewed the things on the documents and traced them back  
11 to the source records. I also initialed and dated that I had  
12 seen them.

13 Q. Did you summarize the information in the bank records, the  
14 American Express card statements and the invoices, in a summary  
15 document?

16 A. Yes, they're summarized in my review of the checks and bank  
17 statements.

18 Q. I'm showing next what's been marked for identification as  
19 government Exhibit 110?

20 A. 110.

21 THE COURT: Okay.

22 Q. Do you recognize what that is?

23 A. Yes.

24 Q. Who prepared that document?

25 A. I did.

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Riley - direct

1 Q. What is the summary of?

2 A. It's a summary of the bank, analysis of the bank statements  
3 and checks.

4 Q. Of?

5 A. Of CASI, and the four bank accounts of CASI.

6 MR. KWOK: Government offers government Exhibit 110?

7 MR. RUBINSTEIN: No objection, your Honor.

8 THE COURT: Let me just see. I want to know exactly  
9 what it is. 110 is the summary of which exhibits, the 70 --  
10 does it also include credit cards?

11 THE WITNESS: Yes, sir, it does.

12 THE COURT: So it's 70 and 80. And what about -- and  
13 81, is that right?

14 THE WITNESS: The credit cards are 90, and the checks  
15 were 81 -- the checks were 81, right. Checks are 81. So it  
16 includes 90, the American, the American Express bills and 81,  
17 the checks from the four bank accounts.

18 THE COURT: 90 you mean?

19 THE WITNESS: Yeah.

20 THE COURT: What?

21 THE WITNESS: No.

22 THE COURT: Includes 90?

23 THE WITNESS: 90 is, what is 90? Oh, yes, the  
24 American Express -- yes, the American Express bill is 90, 90  
25 and 81.

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Riley - direct

1 THE COURT: Just 90 and 81, not 70, not 80.

2 THE WITNESS: 70 is --

3 Q. If I can ask the next question, I think it would clear it  
4 up.

5 Ms. Riley, did you prepare a separate summary for the  
6 information contained in government exhibit 80?

7 A. Yeah, the separate, 80 --

8 Q. What is government exhibit 80?

9 A. Oh, yes, I did. Dr. Karron's checks has a separate  
10 summary.

11 THE COURT: All right. 80 is a separate one. What is  
12 in this one, 110; what is included in 110?

13 MR. KWOK: Let me ask the witness.

14 THE COURT: That's what I'm asking the witness.

15 Q. Ms. Riley, does government exhibit 110 include government  
16 exhibit 81, government exhibit which is the CASI bank account  
17 statement, and government exhibit 90, which are the American  
18 Express card statements?

19 A. Yes.

20 Q. And does what is marked for identification as government  
21 exhibit 111, include a summary of government exhibit 80, which  
22 is the Chase Bank account statements for Dr. Karron,  
23 personally?

24 A. Yes, plus it also includes the personal credit card  
25 statements that were included in 90 American Express.

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Riley - direct

1 MR. KWOK: Government offers --

2 THE COURT: I'm absolutely confused as to what it  
3 covers. I don't follow what she's covering in each of these  
4 exhibits.

5 THE WITNESS: Okay.

6 THE COURT: She doesn't seem to make it clear.

7 THE WITNESS: Okay.

8 THE COURT: 90 is included in both, apparently.

9 Q. Ms. Riley, why is government exhibit 90 included in both  
10 summaries?

11 A. Government exhibit 90 has business credit cards and it's  
12 statements, and it also has a couple of personal credit card  
13 statements. So the business credit card statements are  
14 included, along with exhibit 81, the business checks and  
15 analyzed, and the personal credit card statements in 90 are  
16 included with the personal bank account checks for Dr. Karron  
17 and in Exhibit 110, 111 -- 111.

18 THE COURT: So is the stipulation you're making  
19 between Exhibit 110 and 111 is that one is for personal records  
20 of Dr. Karron and the other is for the business records of --  
21 that or business accounts of CASI?

22 THE WITNESS: Yes, sir; yes, sir.

23 THE COURT: Which Dr. Karron may have had drawing  
24 power over as a --

25 THE WITNESS: Right.

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865zkar1

Riley - direct

1 THE COURT: -- an executive of CASI?

2 THE WITNESS: Yes, he did have drawing power as an  
3 executive of CASI.

4 THE COURT: So which is which, the personal -- Dr.  
5 Karron, personally, is 110?

6 THE WITNESS: Right.

7 THE COURT: And CASI and Dr. Karron business wise is  
8 111; is that right?

9 THE WITNESS: No, Dr. Karron personal is 111, because  
10 on the personal --

11 THE COURT: All right.

12 Q. Ms. Riley, just to be clear, government Exhibit 111, isn't  
13 that Dr. Karron's -- summary of Dr. Karron's personal expenses  
14 as reflected in the American Express card statements and his  
15 personal Chase Bank statements?

16 A. Yes.

17 Q. And just to be clear, is government Exhibit 110 a summary  
18 of the business expenses as reflected in the Chase Bank  
19 statements and the bank expenses -- CASI's expenses as  
20 reflected in the American Express credit card statements.

21 A. Yes.

22 MR. KWOK: Government offers 110 and 111.

23 THE COURT: 110 and 111 are admitted without  
24 objection.

25 (Government's Exhibits 110 and 111 received in

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865zkar1

Riley - direct

1 evidence)

2 Q. Now, Ms. Riley -- Ms. Moussa, if we could put up government  
3 Exhibit 110 on the screen, which is the summary for CASI  
4 expenses. If we could zoom in on the top half of the page.

5 Ms. Riley, could you tell us what the column headings  
6 of your data base indicate?

7 A. Okay. The first one the ID is just a number assigned by  
8 the computer. The description is the payee of the check. It  
9 was electronic funds transfer, the information from the bank  
10 statement concerning the payee. The date is from the date  
11 that -- the date on the bank statement that the check was  
12 cleared. The -- and the total of the, of the check. The check  
13 memo entries are from, are from -- if there was a check memo on  
14 the account, and for some of the accounts if I -- I may have  
15 gone back to one of the ledgers from the previous audit to get  
16 a check, an entry there. But it normally says per ledger if it  
17 didn't come from the check.

18 THE COURT: I'm sorry, what exhibit is that from? I'm  
19 a step behind you all.

20 MR. KWOK: What is on the screen, your Honor, is  
21 government exhibit 110.

22 THE COURT: And this is not the first page, it's -- oh  
23 it is the first page.

24 THE WITNESS: It is the first page.

25 THE COURT: But it's cut off, is that the problem?

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Riley - direct

1 THE DEPUTY CLERK: They blew up a section of it.

2 THE COURT: You can't -- you're not -- you haven't got  
3 the whole page on there, because it says bank transfer, right?

4 MR. KWOK: That's correct.

5 THE WITNESS: Yes.

6 THE COURT: All right. Okay.

7 MR. KWOK: Ms. Moussa, if we could put up what is  
8 already in evidence, pages from government exhibit 81, which is  
9 the CASI bank statements. If we could zoom in on the top  
10 check. May I approach, your Honor?

11 THE COURT: This is part of what, 80?

12 MR. KWOK: This is exhibit 81. It's not in the jury  
13 binders because it's part of voluminous bank records, but it is  
14 on the screen.

15 THE COURT: All right.

16 MR. RUBINSTEIN: Could I just ask one question, your  
17 Honor?

18 THE COURT: What for? You mean voir dire of some  
19 sort?

20 MR. RUBINSTEIN: Yes.

21 MR. KWOK: It's already in evidence.

22 THE COURT: It's a little late.

23 MR. RUBINSTEIN: Could I ask one question, Judge? It  
24 may help later on.

25 THE COURT: Maybe I'll ask it. Why don't you come up.

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Riley - direct

1 I hate to interrupt.

2 (Continued on next page)

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865zkar1

Riley - direct

1 (At the sidebar)

2 MR. RUBINSTEIN: Each one of these accounts that she  
3 mentioned has a different color check. Showing it up here is  
4 in black and white. I just want to ask her what color check it  
5 is so the jury will know. That way they'll know what account  
6 it comes from.

7 THE COURT: Whether she knows what color check?

8 MR. RUBINSTEIN: She has the original.

9 MR. KWOK: We don't -- your accountant did --

10 THE COURT: What?

11 MR. KWOK: That's the way it's provided to us by the  
12 bank. It's in evidence in black and white.

13 MR. RUBINSTEIN: Okay, all right.

14 (Continued on next page)

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8657KAR2

Riley - direct

1 BY MR. KWOK:

2 Q. Ms. Riley, do you recognize the documents that are being  
3 displayed on the screen there?

4 A. Yes.

5 Q. What are they?

6 A. They are checks from the Computer Aided Surgery checking  
7 account.

8 Q. Who is the payee?

9 A. Dr. D.B. Karron.

10 Q. For how much?

11 A. \$2,000.

12 THE COURT: Which check are you talking about?

13 Q. Can you tell us the check number?

14 A. The top check, 2977.

15 Q. What does it say on the memo line?

16 A. Rental office, 300 East 33rd Street, Suite 4N.

17 Q. How about the handwritten notation?

18 A. January 2000 rent.

19 MR. RUBINSTEIN: Excuse me?

20 THE WITNESS: January 2000 rent.

21 Q. Can you tell me how that information is reflected on your  
22 database, Government Exhibit 110.

23 A. Exhibit 110, on page 39 of 44. Exhibit 110, page 39 of 44.

24 MR. KWOK: If we could zoom in on the bottom portion  
25 of the page.

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8657KAR2

Riley - direct

1 Q. Could you tell us how the information we just looked at on  
2 the check is reflected here?

3 A. OK. It's under rent on office. Under the description it  
4 has in parens it's got Dr. Karron, and the other thing is his  
5 bank account number that the check was deposited into, his  
6 personal account. It showed that there was a transfer into his  
7 checking account. And the date of the transaction was  
8 10/26/2001.

9 Q. Is that the same or different from the check we just looked  
10 at?

11 A. It's the same.

12 Q. What is the check number reflected on the database?

13 A. 2977.

14 Q. Is that the same check number as we just looked at?

15 A. Yes. And the memo is rent on office per general ledger,  
16 from the check memo, and it's \$2,000. It's the amount for  
17 check number 2977.

18 Q. Now, I'm showing you another page from Government Exhibit  
19 81 which is the CASI bank statement. Do you recognize this  
20 check?

21 A. Yes, it's from the CASI/NIST checking account.

22 Q. What is the check number there?

23 A. 10325.

24 Q. And who is the payee?

25 A. D. Ferrand.

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8657KAR2

Riley - direct

1 Q. And do you see a signature there?

2 A. Yes, it's Dr. Karron.

3 Q. Could you explain to us how this information is reflected  
4 on your database.

5 If we could go back to the database, please.

6 THE COURT: What is the amount of the check?

7 Q. What is the amount of the check?

8 A. \$100. OK. This is on --

9 Q. Could you direct us to the page of the database where that  
10 check is reflected?

11 A. The check number was 10325 on page 37 of 44 on Exhibit 110.

12 MR. KWOK: Can we zoom in?

13 MR. RUBINSTEIN: We're still on 110, are we?

14 THE WITNESS: Yes, Exhibit 110, page 37 of 44.

15 Q. Where should we be looking?

16 A. In the middle of the page. If you look, the check number  
17 it's 10325, so if you look under the check number column it's  
18 down under -- yeah -- you see the notation.

19 THE COURT: I'm sorry. She should be doing the  
20 pointing out to what she is testifying. It shouldn't be you,  
21 Mr. Kwok. All right?

22 A. OK. The check number of 10325 for cleaning office charges  
23 for the week ending 6/22/02 in the amount of \$100. 10325 is  
24 the check number. It was for cleaning offices. The amount is  
25 \$100, and the pay payee Steve Korand, that's shown under the

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Riley - direct

1 description of the column.

2 Q. If we could look at the rest of the page. Under the check  
3 memo.

4 THE COURT: The rest of the page of exhibit -- you are  
5 making a record, Mr. Kwok. The record has to be clear as to  
6 what exhibits you are referring to at all times.

7 MR. KWOK: I apologize.

8 THE COURT: No one can review the record if you don't  
9 mention the exhibit number at all times.

10 MR. KWOK: I am still looking at Government Exhibit  
11 110. I am still looking at page 37 of 44.

12 Q. Now, directing your attention to the top portion of that  
13 page, what appears under the check memo column?

14 A. The check memo is information taken from the memo section  
15 of the check.

16 Q. What does it say on the check memo?

17 A. Oh, cleaning.

18 Q. And what did you base that information on?

19 A. Some of the checks were based on, if they didn't have -- in  
20 order to identify the check and what the check was for, on some  
21 of the checks I looked back at the ledgers that I had gotten  
22 from CASI's audits prepared by either Mel Spitz or for the  
23 check registers I had gotten from the June audit 2003.

24 Q. Ms. Riley, I'm showing you a check from Government Exhibit  
25 81 already in evidence, which is the bank account statements

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Riley - direct

1 for CASI.

2 Can we put one by one up on the screen?

3 What information is reflected -- what check number is  
4 that, first of all?

5 A. 10330.

6 Q. And what information is next to the memo line of the check?

7 MR. RUBINSTEIN: Sorry. I missed the check number.

8 THE WITNESS: 10330.

9 Q. And what information is reflected next to the memo line of  
10 the check?

11 A. Cleaning office charges for the week ending 6/29/2002.

12 Q. Look at the next check, still Government Exhibit 81. What  
13 is the check number on that check?

14 A. 10325.

15 Q. What is the information reflected next to the memo line?

16 A. Cleaning office charges for the week ending 6/22/02.

17 Q. And directing your attention to the upper left-hand corner  
18 of the check, what does that say?

19 A. Computer Surgery, Incorporated, NIST ATP DMT Program.

20 Q. Let the record reflect these are colored checks.

21 A. I think they're colored, aren't they pink?

22 THE COURT: Do you know?

23 THE WITNESS: Yeah, they're colored.

24 Q. And who is the payee on that particular check?

25 A. The payee is D. Ferrand.

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Riley - direct

- 1 Q. What's the amount of the check?
- 2 A. \$100.
- 3 Q. Let's look at the next and final check, still Government
- 4 Exhibit 81, part of the bank reports. What is the check number
- 5 on this check?
- 6 A. 10509.
- 7 Q. How about the upper left-hand corner of the check, what
- 8 does that say?
- 9 A. Computer Aided Surgery, Inc. NIST ATP DMT program.
- 10 Q. And who is the payee on that check?
- 11 A. D. Ferrand.
- 12 Q. For how much?
- 13 A. \$100.
- 14 Q. And what is the information reflected next to the memo
- 15 line?
- 16 A. Cleaning office charges for the week ending 10/5/2002.
- 17 Q. What's the signature that appears on that check?
- 18 A. D.B. Karron.
- 19 Q. Now, Ms. Riley, a moment ago you mentioned American Express
- 20 card statements.
- 21 A. Yes.
- 22 Q. How is the information on the American Express card
- 23 statements, which is Government Exhibit 90, reflected on your
- 24 database?
- 25 A. The transaction of the credit card is taken from the credit

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Riley - direct

1 card invoice, but the transaction for paying the credit card  
2 was picked up whenever I analyzed the CASI bank statements.

3 THE COURT: What?

4 THE WITNESS: The payment of the credit card was  
5 already in the database because I had that information when I  
6 reviewed the bank statements, the bank statements and canceled  
7 checks. So the payment was already in the database. I just  
8 added the transactions, the purchase transactions from the  
9 credit card.

10 THE COURT: You just added the information about who  
11 the purchaser was?

12 THE WITNESS: And the amount and the date of the  
13 transaction.

14 THE COURT: I see. So the total payment for the  
15 credit card is already in the database?

16 THE WITNESS: Yes, sir.

17 THE COURT: So, these were just individual --

18 THE WITNESS: Yes.

19 THE COURT: -- transactions.

20 THE WITNESS: Right. And so that it wouldn't show as  
21 a double payment I handled the credit card, I took the credit  
22 card payments out of the deposit withdrawal section of the  
23 database.

24 MR. KWOK: May I approach, your Honor?

25 Q. Ms. Riley, I just handed you pages from Government Exhibit

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Riley - direct

1 90, which is the American Express card statements. It's in the  
2 jury binders. Now, could you show us an example of how some of  
3 the information in the document that I just handed you is  
4 reflected on your database, Government Exhibit 110.

5 A. OK. If we go to -- does everybody have 90?

6 Q. What page are you looking at in your database, Ms. Riley?

7 THE COURT: What page of 110 are you looking at? Is  
8 that what you're asking her?

9 MR. KWOK: That's what I'm asking the witness.

10 Q. What page of Government Exhibit 110 are you looking at?

11 A. Page 24 of 37 of Exhibit 110. Actually --

12 MR. KWOK: Your Honor, may I direct the witness's  
13 attention to a particular page?

14 THE COURT: Of 110?

15 MR. KWOK: Yes.

16 THE COURT: She said 24 of 37.

17 Q. Is that the correct page?

18 A. I don't think so.

19 THE COURT: It depends on what she is comparing it to.

20 Q. Let me do it this way. Ms. Riley can I direct your  
21 attention to page 29 of 44 of your database. Do you have that  
22 page?

23 A. Page 29 of 44? Yes.

24 Q. OK.

25 THE COURT: Exhibit 110.

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8657KAR2

Riley - direct

1 Q. 29 of 44, Exhibit 110, do you have that page?

2 A. Oh, you're right, OK. I'm sorry. 29 of 44, yes.

3 Q. OK. Let's put your finger on that page, and look back at  
4 the American Express card statements that I just showed you.

5 If we could have that up on the screen, please.

6 Government Exhibit 90.

7 THE COURT: What are you asking to have put up on the  
8 screen.

9 MR. KWOK: Government Exhibit 90, the statement for  
10 August 7, 2002.

11 THE COURT: First page?

12 MR. KWOK: Page 2.

13 Q. Now, looking at the screen, Ms. Riley, and if you could use  
14 your pointer, what transaction is reflected for July 12, 2002?

15 A. I misplaced my pointer.

16 MR. RUBINSTEIN: Are there numbers on the bottom of  
17 the page that I can't see? OK. I have my revised.

18 Q. OK. Ms. Riley, what transaction is reflected -- what is  
19 the first transaction for July 12, 2002?

20 A. July 12, 2002, the American Express shows a charge to Sam's  
21 Noodle Shop in the amount of 29.10. On page 29 of 44 --

22 Q. Let's go through the American Express card statements  
23 first. Let's turn to the next page of the American Express  
24 card statement, Government Exhibit 90, page 3.

25 A. OK.

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Riley - direct

1 Q. What transaction is shown for July 22, 2002?

2 A. July 22, 2002 there is a charge to Sam's Noodle Shop for  
3 23.55.

4 Q. And is there a charge reflected on the same page,  
5 Government Exhibit 90, page 3 of 7, for August 7, 2002 to the  
6 same vendor?

7 THE COURT: What's your question again?

8 Q. Directing your attention to July 30, 2002, Ms. Riley.

9 A. Oh, yes, on July 30 there is Sam's Noodle Shop for the  
10 amount of 19.45.

11 Q. OK. Now, let's turn back to Government Exhibit 110 that we  
12 just looked at, page 29 of 44. Can you tell us how the  
13 information that we just looked at is reflected on your  
14 database?

15 A. It comes through the date column to July.

16 MR. RUBINSTEIN: Your Honor, excuse me. Are we on  
17 page 24 or 29?

18 THE WITNESS: 29 of 44.

19 MR. RUBINSTEIN: Thank you.

20 A. On July 12 there is a transaction to Sam's Noodle Shop in  
21 the amount of 29.10, and on July 22 there is a transaction to  
22 Sam's Noodle Shop of 23.55, and on July 30, Sam's Noodle Shop  
23 in the amount of 19.45.

24 THE COURT: So, how was this credit card paid for?

25 THE WITNESS: It's paid for out of this account.

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8657KAR2

Riley - direct

1 THE COURT: What account?

2 THE WITNESS: Out of one of the CASI -- at the CASI  
3 accounts. This one --

4 THE COURT: You told us there are multiple CASI  
5 accounts.

6 THE WITNESS: Right. But in my database they are  
7 treated as one account, one big account, because the deposits  
8 come from NIST, from one source.

9 THE COURT: The deposits come from where?

10 THE WITNESS: From NIST, the ATP grant award. There  
11 is a lot of interaccount transfers, but for the most part the  
12 deposits are coming from the grant monies.

13 MR. KWOK: If we could put back up on the screen  
14 Government Exhibit 90, the American Express card statement, the  
15 August 7, 2002 statement, page 1. If we could zoom into the  
16 middle portion of that page there highlighted in gray.

17 Q. What does this statement show regarding payment to the  
18 outstanding credit card balance?

19 A. It shows on July 14, 1,074.91 was received by American  
20 Express from CASI, and on July 29 that American Express  
21 received a payment of \$2,940.01 from CASI.

22 Q. And where did the money come from that paid off these  
23 credit card balances?

24 A. From the CASI/NIST bank accounts.

25 Q. How do you know that?

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Riley - direct

1 A. OK. Those transactions are reflected on page 3 of 44 of  
2 Exhibit 110.

3 Q. Are you talking about Government Exhibit 110, Ms. Riley?

4 A. Yes, Government Exhibit 110, page 3 of 44.

5 Q. And where are you looking?

6 A. Kind of the middle of the page, under the payments of the  
7 credit card.

8 THE COURT: Sorry. What was that page again?

9 THE WITNESS: 3 of 44.

10 Q. Can you point them out on the screen?

11 A. Yes. It shows that American Express electronic remittance  
12 was made from the CASI bank statement account on 7/15 in the  
13 amount of \$1,074.91 to pay American Express, and that another  
14 electronic remittance was made from the account on July 31,  
15 2002 to pay American Express in the amount of \$2,940.01.

16 Q. Did you base this information on the Chase credit card  
17 statements of CASI?

18 A. This information came from the bank statements and the  
19 payment of the bank statements.

20 Q. Chase Bank?

21 A. Chase Bank.

22 Q. I am handing you a few pages from Government Exhibit 81,  
23 the CASI Chase Bank account statements, which is also in the  
24 jury binders. Directing your attention to the June 22 to July  
25 22 statement period, page 3.

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Riley - direct

1 MR. RUBINSTEIN: Excuse me. What are those dates?

2 MR. KWOK: I'm looking at Government Exhibit 81, the  
3 Chase statements for CASI, the period from June 22 to July 22,  
4 page 3 of 4.

5 THE COURT: Let the witness point to the area you are  
6 referring to.

7 A. The bank statement shows that on 7/15 there was an American  
8 Express electronic payment in the amount of 1,074.91 from the  
9 Chase bank account.

10 MR. KWOK: And if you could zoom out for a second.

11 Q. Directing your attention to the upper right-hand corner,  
12 under the primary account number, what is the text that's  
13 underneath that?

14 A. It says Computer Aided Surgery, Incorporated, NIST ATP DMT  
15 Program.

16 Q. And directing your attention now to the same exhibit,  
17 Government Exhibit 81, but now we are looking at the next  
18 statement period from July 23 to August 21, 2002, page 3 of 4.  
19 Do you have that page, Ms. Riley?

20 A. Sorry. What page?

21 Q. July 23 to August 21, 2002, that period statement?

22 THE COURT: Where do I find the date?

23 MR. KWOK: It's on the upper right-hand corner of  
24 every page.

25 THE COURT: I see. July what?

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Riley - direct

1 MR. KWOK: July 23 to August 21, 2002, the statement  
2 for that account period.

3 THE COURT: Just one second. So that's six or eight  
4 pages in.

5 MR. KWOK: That's page 3 of 4. It's the page on the  
6 screen.

7 THE COURT: July 23, page --

8 MR. KWOK: It's actually page 10 on the bottom of the  
9 page.

10 THE COURT: Page 10 at the bottom right-hand corner?

11 MR. KWOK: Of the page, yes.

12 THE COURT: Of that statement.

13 MR. KWOK: Of that statement, correct.

14 Q. Do you have that page, Ms. Riley?

15 A. Yes.

16 Q. Directing your attention to the withdrawal and debits  
17 portion of that page, what are you pointing at, Ms. Riley?

18 A. This shows the payment on 7/31, the electronic remittance  
19 to American Express of \$2,940.01. That corresponds to the  
20 amount that we just looked at on the American Express  
21 statement.

22 Q. So, is that the same or different number than the one we  
23 just looked at in the American Express card statement  
24 Government Exhibit 90?

25 A. It's the same number.

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Riley - direct

1 THE COURT: Same account number.

2 THE WITNESS: The payment.

3 THE COURT: Same --

4 THE WITNESS: -- payment.

5 Q. When you say same number, what number are you referring to?

6 A. The same payment, the July 29 on the American Express bill  
7 shows that they received \$2,940.01 from CASI, and the bank  
8 statement electronic remittance shows that this bank account  
9 paid \$2,940.01 to American Express.

10 THE COURT: All right.

11 Q. Now, Ms. Riley, other than summarizing information on your  
12 databases, what else did you do in your analysis of the bank  
13 records?

14 A. Created charts and graphs.

15 Q. I am showing you what's been marked for identification as  
16 Government Exhibit 112 and 113. They are not yet in evidence  
17 but marked for identification. Do you have that in front of  
18 you, Ms. Riley?

19 A. Yes, I do.

20 Q. Do you recognize what they are?

21 A. Yes.

22 Q. And what are they?

23 A. They are pie charts that I created from the bank statements  
24 of CASI.

25 Q. How did you create these graphs?

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Riley - direct

1 A. I used the information that was in Exhibit 110, the bank  
2 records, to create these graphs.

3 MR. KWOK: The government offers Exhibit 112 and 113.

4 THE COURT: No objection?

5 MR. RUBINSTEIN: No objection, your Honor.

6 THE COURT: 112 and 113 are admitted into evidence.

7 (Government's Exhibits 112 and 113 received in  
8 evidence)

9 Q. Now, let's take them one at a time, Ms. Riley. Let's go  
10 first to Government Exhibit 112. What graph is that of?

11 A. This is a graph of the deposits into the CASI bank accounts  
12 for the period 10/1/2001 through 9/30/2002 which is the first  
13 year of the grant award.

14 Q. And what does the purple area represent?

15 A. It represents the deposits into the account for the NIST --  
16 for the grant money.

17 Q. Was there any other source of funding that's not from the  
18 ATP grant?

19 A. There were a couple of minor deposits, but they were really  
20 credit, refunds to other accounts, so they were used as  
21 offsets, not as deposits. They were refund checks.

22 Q. Now, let's go through Government Exhibit 113. Ms. Riley,  
23 what is this a graph of?

24 A. The CASI business account -- deposits into the CASI  
25 business accounts for the period 10/1/2002 through 6/30/2003,

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8657KAR2

Riley - direct

1 which is the nine months of the second year of the award.

2 Q. What does the purple area of the graph represent?

3 A. Deposits of grant monies received by CASI.

4 Q. And how about that line that's breaking up the circle?

5 A. This is miscellaneous other deposits into the account.

6 Q. Ms. Riley, did you prepare any additional graphs aside from  
7 these ones that we just looked at?

8 A. Yes.

9 Q. What did you prepare?

10 THE COURT: What was the amount of those other  
11 deposits into the account?

12 THE WITNESS: The deposits from NIST were \$545,000,  
13 and the miscellaneous deposits were like 1200, 1500, something  
14 really small.

15 THE COURT: Sorry.

16 Q. Ms. Riley, aside from these graphs, did you create any  
17 additional charts and graphs?

18 A. Yes.

19 Q. What did you prepare?

20 A. I analyzed the expenditures from the accounts.

21 Q. I am showing you what have been marked for identification  
22 as Government's Exhibits 114 and 115. Do you have those in  
23 front of you?

24 A. Yes.

25 Q. Do you recognize what they are?

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Riley - direct

1 A. Yes, they are the pie charts that I created for the  
2 analysis of the expenditures.

3 Q. And what documents did you look at to create these graphs  
4 and charts?

5 A. Canceled checks and American Express statements were the  
6 main source documents used to create these.

7 MR. KWOK: Government offers Government's Exhibits 114  
8 and 115.

9 MR. RUBINSTEIN: No objection, your Honor.

10 THE COURT: 114 and 115 are admitted into evidence.

11 (Government's Exhibits 114 and 115 received in  
12 evidence)

13 MR. KWOK: May we publish that to the jury?

14 THE COURT: You say these are expenditures?

15 THE WITNESS: Yes, sir. For 114 and 115 I did  
16 analysis and expenditures.

17 THE COURT: First for the year ended October 10, 2002?

18 THE WITNESS: OK. And that is because of the  
19 breakdown for the fringe benefits for check paid to IRS for  
20 withholdings or whatever, the breakdown I had for check and  
21 fringe benefits, I had an analysis for the year prepared by one  
22 of the accountants that I could reconcile the numbers -- the  
23 check payments through October 10. So, it doesn't --

24 THE COURT: 114 and 115 are admitted in evidence.

25 Q. Now, Ms. Riley looking first at Government Exhibit 114,

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8657KAR2

Riley - direct

1 what is the pie chart at the upper left-hand corner?

2 A. The upper left-hand corner pie chart is just a breakdown of  
3 the budget, the NIST budget, grant budget to CASI, and it has  
4 the budget categories by amount.

5 THE COURT: Which budget?

6 THE WITNESS: For the year one CASI/NIST ATP budget.

7 THE COURT: Approved the first one or the subsequent?

8 THE WITNESS: Amendment to approved budget.

9 Q. So, staying with that graph for a second, just walk us  
10 through an example, for example, what subcontractor shows.

11 A. Subcontractor shows that the NIST-approved budget had a  
12 budget of \$250,000 for subcontractor costs for year one for the  
13 NIST ATP grant award.

14 Q. How about, for example, Dr. Karron's salary, according to  
15 the approved budget?

16 A. The approved budget had allowed -- Dr. Karron's salary for  
17 the approved budget was \$175,000.

18 MR. KWOK: OK. Now let's zoom back out. Let's turn  
19 to the upper right-hand corner of the chart. If we could zoom  
20 that in.

21 Q. What is this chart?

22 A. This chart shows according to the checks. The checks are  
23 the American Express transactions from the CASI business  
24 account. This is a breakdown by the budget categories of how  
25 the checks were written.

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Riley - direct

1 Q. OK. And what is the yellow area of that chart?

2 A. The yellow area for the most part is what is limited by the  
3 budget category. If it was spent over budget, then there is a  
4 portion that's red and a portion that's yellow. It's costs  
5 that are allocable to those budget categories in the analysis  
6 of checks and American Express transactions. Like for the --

7 Q. And what does the red area of the graph represent?

8 A. The red area represents costs that were over budgets, that  
9 were considered indirect costs and nonallowable, like dues and  
10 subscriptions, lawyers, and the rent paid to Dr. Karron, was  
11 not allowable per the budget.

12 MR. KWOK: Let's zoom it back out. Let's turn to the  
13 bottom right-hand corner of the page.

14 Q. What is that the chart of?

15 A. There is a 10 percent budget category adjustment that's  
16 allowed by NIST ATP.

17 Q. What is a 10 percent adjustment? Can you explain that?

18 A. 10 percent of the budget amount can be reallocated from say  
19 subcontractor costs to personnel expense, if you have less  
20 subcontractor costs than you thought.

21 So, this is to show that \$83,000 which could be  
22 reallocated between the budget category if that's the only  
23 thing that made something unallowable, but it was over budget.

24 Q. According to this chart, what is the total of disallowable  
25 amount for year one of the grant period?

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Riley - direct

1 A. This one shows \$268,638.

2 Q. Let's zoom it back out, and let's focus on the table for  
3 now. What does the table show?

4 A. The table shows the budget categories compared to the  
5 amount of money spent by CASI, and the difference between what  
6 CASI spent and what the budget allowed to be spent, and then it  
7 shows the percentage difference.

8 Q. Can you walk us through an example of that.

9 A. Well, for like Dr. Karron's salary the budget was \$175,000,  
10 CASI spent \$200,000 for year one, a difference of \$25,488, for  
11 a difference of 14.56 percent over.

12 Q. OK. Let's zoom it back out. Let's go back to the upper  
13 right-hand corner portion of the page, the pie chart with the  
14 red. Does this chart take into account the lack of any cost  
15 share that you testified about yesterday?

16 A. No, it doesn't have cost share.

17 Q. What would this chart have looked like if that information  
18 had been reflected on the chart?

19 A. Some of the red numbers might be yellow if some of the cost  
20 share had been reflected.

21 Q. I'm sorry. Let me rephrase. If you had included in your  
22 chart the absence of any cost share that you testified about  
23 yesterday, what would this chart look like?

24 A. If I took into consideration that there was no cost share,  
25 none of the cost would be allowable, and all other costs would

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8657KAR2

Riley - direct

1 be red.

2 Q. Let's go to Government Exhibit 115. What is this a chart  
3 of?

4 A. This is a chart of the same type information for year two  
5 of the award, the nine months of year two.

6 Q. Let's go to the first graph, the upper left-hand corner.  
7 Again, what information is reflected on this chart?

8 A. This is the expenditures by budget category in the NIST  
9 budget award.

10 Q. So, using subcontractor as an example, what is budgeted for  
11 year two?

12 A. \$110,000.

13 Q. Let's go to the full page, to the upper right-hand corner.  
14 And once again, what is this a chart of for year two?

15 A. This is the expenditures from the CASI NIST accounts broken  
16 down by budget category, from the check accounts and the  
17 American Express accounts.

18 Q. What is represented by the red portion?

19 A. The red portion would be costs that would be over the  
20 budget category or maybe not allowable because they are  
21 indirect costs.

22 Q. What are some of those examples?

23 A. The equipment cost over budget here of \$90,169, supply  
24 costs over budget of \$8,800.

25 Q. Let's zoom it back out and look at the chart to the bottom

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Riley - direct

1 right. What is the total disallowed expense that you found for  
2 year two?

3 A. According to this analysis, it would be \$196,504.

4 Q. Once again, what is that little portion that's a little off  
5 to the side?

6 A. It's allowed, the 10 percent rule that you can allow,  
7 allowing for 10 percent adjustment to the budget categories,  
8 there would still be -- there would only be 50,000 of the  
9 196,000 that would be OK.

10 THE COURT: So with the adjustment it would be  
11 \$146,017.

12 THE WITNESS: Right.

13 Q. Now, Ms. Riley, let's go to what's been marked for --  
14 actually what is already in evidence as Government Exhibit 101.  
15 Do you have that document in front of you?

16 A. 101?

17 Q. That's correct.

18 MR. KWOK: It's Government Exhibit 101, your Honor.

19 Q. Do you have that document?

20 A. Yes.

21 Q. Do you recognize it?

22 A. Yes, it's the Homefront Hardware invoice.

23 Q. And did you analyze this document in the course of your  
24 analysis?

25 A. Yes.

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8657KAR2

Riley - direct

1 Q. Were you able to determine how the balances reflected on  
2 these invoices were paid for?

3 A. Yes. They were paid for from the CASI/NIST bank account,  
4 or American Express or except for one transaction for \$301 that  
5 was paid from Dr. Karron's personal credit card account.

6 Q. Aside from that, were there any invoices paid for from Dr.  
7 Karron's personal account?

8 A. Yes, one for \$301.

9 Q. Aside from that, is there anything else?

10 A. No, the rest of them were paid for from the CASI/NIST  
11 account.

12 Q. And how were you able to make that determination?

13 A. I traced the payment back to my database of check payments,  
14 back to the bank statements, to the canceled checks, or to the  
15 American Express statement that paid them.

16 MR. KWOK: Your Honor, at this time the government  
17 would like to read into the record another stipulation marked  
18 for identification as Government Exhibit 901.

19 THE COURT: Yes.

20 MR. KWOK: United States of America v. Daniel B.  
21 Karron, defendant, S1 07 Crim. 541.

22 "It is hereby stipulated and agreed by and among the  
23 United States of America, by Michael J. Garcia, the United  
24 States attorney for the Southern District of New York, Steve  
25 Kwok and Christian Everdell, assistant United States attorneys,

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Riley - direct

1 of counsel, and defendant Daniel B. Karron, by and with the  
2 consent of his attorney, Ronald Rubinstein, Esq. that:

3 "1. The document marked for identification as  
4 Government Exhibit 120 is an inventory of items seized on or  
5 about June 26, 2007 from 300 East 33rd Street, Apartment 4N,  
6 New York, New York, pursuant to a seizure warrant issued by the  
7 Honorable Douglas F. Eaton, United States magistrate judge of  
8 the Southern District of New York.

9 "2. The item marked for identification as Government  
10 Exhibit 112 corresponds to item 79, GPS system, identified in  
11 Government Exhibit 120.

12 "3. The item marked for identification as Government  
13 Exhibit 122 corresponds to item 20, Sony Cybershot camera  
14 DSC-F707, identified in Government Exhibit 120.

15 "4. The item marked for identification as Government  
16 Exhibit 123 corresponds to item 23, Infocus LCD projector with  
17 mount, identified in Government Exhibit 120.

18 "5. The item marked for identification as Government  
19 Exhibit 124 corresponds to item 18, projector screen,  
20 identified in Government Exhibit 120.

21 "6. The item marked for identification as Government  
22 Exhibit 125 corresponds to item 75, shoe rack, identified in  
23 Government Exhibit 120.

24 "7. The item marked for identification as Government  
25 Exhibit 126 corresponds to item 37, Kitchen Classics blender by

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1 Waring, identified in Government Exhibit 120.

2 "8. The item marked for identification as Government  
3 Exhibit 127 corresponds to item 46, Large STABILA bubble level,  
4 identified in Government Exhibit 120.

5 "9. The item marked for identification as Government  
6 Exhibit 128 corresponds to item 36, Dust Buster, identified in  
7 Government Exhibit 120.

8 "10. The item marked for identification as Government  
9 Exhibit 129 corresponds to item 82, folding ladder, identified  
10 in Government Exhibit 120.

11 "11. The item marked for identification as Government  
12 Exhibit 130 corresponds to item 41, Porter cable rechargeable  
13 tool set, identified in Government Exhibit 120.

14 "12. The item marked for identification as Government  
15 Exhibit 131 corresponds to items 38 and 39, Porter cable Tiger  
16 Saw quickcharge and two batteries and charger for item 38,  
17 identified in Government Exhibit 120.

18 "13. The items marked for identification as  
19 Government Exhibit 132 correspond to items 42 and 74, set of  
20 three rechargeable flashlights with chargers, and set of two  
21 rechargeable flashlights with chargers, identified in  
22 Government Exhibit 120.

23 "It is further stipulated and agreed that Government  
24 Exhibits 120 and 121, 122, 123, 124, 125, 126, 127, 128, 129,  
25 130, 131, 132 may be received in evidence as Government's

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Riley - direct

1 Exhibits at trial."

2 Signed and dated, signed on behalf of the United  
3 States by Steve Kwok, and on behalf of Daniel B. Karron by  
4 Ronald Rubinstein, Esquire.

5 MR. RUBINSTEIN: What was that exhibit, sir?

6 MR. KWOK: It's marked for identification as  
7 Government Exhibit 901.

8 THE COURT: That's the stipulation number?

9 MR. KWOK: That's correct, your Honor.

10 THE COURT: Well, I will have to have the stipulation,  
11 a copy of the stipulation, to read off the exhibits.

12 Oh, I see it.

13 All right. Exhibits 120, 121, 122, 123, 124, 125,  
14 126, 127, 128, 129, 130, 131 and 132 are received in evidence.  
15 And Exhibit 901 is received in evidence.

16 (Government's Exhibits 120, 121, 122, 123, 124 and 125  
17 received in evidence)

18 (Government's Exhibits 126, 127, 128, 129, 130, 131  
19 and 132 received in evidence)

20 (Government's Exhibit 901 received in evidence)

21 MR. KWOK: Your Honor, may we publish these items to  
22 the jury?

23 THE COURT: Yes, you may.

24 MR. KWOK: Your Honor, may I go through the items one  
25 by one, just read off the exhibit number?

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Riley - direct

1 THE COURT: Yes, you may.

2 MR. KWOK: Government Exhibit 120, Government Exhibit  
3 122.

4 MR. RUBINSTEIN: Can I see that when you hold it up,  
5 please, Mr. Kwok?

6 MR. KWOK: Government Exhibit 123. Government Exhibit  
7 124 is the screen on the floor. Government Exhibit 125.  
8 Government Exhibit 126. Government Exhibit 127. Government  
9 Exhibit 128. Government Exhibit 129. Government Exhibit 130.

10 MR. RUBINSTEIN: Can I see that, please?

11 MR. KWOK: Government Exhibit 131 and Government  
12 Exhibit 132.

13 BY MR. KWOK:

14 Q. Ms. Riley, did you review additional invoices in the course  
15 of your analysis?

16 A. Yes.

17 Q. I am showing you a document already in evidence as  
18 Government Exhibit 120A. Do you recognize what's already in  
19 evidence as Government Exhibit 120A, Ms. Riley?

20 A. Yes, it's an invoice for Silicon City.

21 Q. How are you able to recognize it?

22 A. The company name is at the top, and I have initialed at the  
23 bottom that I have seen it.

24 Q. Now let's start with the first page. What is the item  
25 shown on the first page of that invoice?

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Riley - direct

1 A. A ten foot screen for \$2,315.50.

2 Q. And what is the total amount of that invoice?

3 A. \$2,583.05.

4 Q. And what is at the bottom portion of that page?

5 A. At the bottom?

6 Q. That's correct.

7 A. It's Computer Aided Surgery, NIST ATP DMT Program check  
8 number 10220 paid in the amount of \$2,583.05.

9 Q. And what is the check number again for that check?

10 A. 10220.

11 Q. Ms. Riley, I am showing you a page from Government Exhibit  
12 81.

13 THE COURT: What account was that on?

14 MR. KWOK: Sorry, your Honor.

15 THE COURT: 10220, what account is it drawn on?

16 THE WITNESS: It's shown on the bottom of the page of  
17 the invoice.

18 THE COURT: What account was it drawn on?

19 THE WITNESS: From the Computer Aided Surgery NIST ATP  
20 DMT Program account.

21 Q. I am showing you a page from Government Exhibit 81. It's  
22 already in evidence and is marked as page 23 at the bottom  
23 right-hand corner of the jury binders. If we could put that up  
24 on the screen, page 23 of the Chase statements.

25 THE COURT: I'm sorry. I lost track. What's the

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8657KAR2

Riley - direct

1 exhibit number?

2 MR. KWOK: It's Government Exhibit 81, your Honor.

3 THE COURT: Thank you.

4 MR. KWOK: And the bottom is page 23 of the jury  
5 binders.

6 Q. Do you have that page, Ms. Riley?

7 A. Yes.

8 Q. Can you show us where check 10220 appears on that page?

9 A. On the bank statement it appears here dated 6/07/2002 and  
10 it's in the amount of \$2,583.05.

11 Q. Now staying on the same page, focusing your attention to  
12 the upper right-hand corner portion of the page, underneath  
13 primary account number, what does that say?

14 A. Computer Aided Surgery Inc., NIST ATP DMT program.

15 Q. Now let's go back to Government Exhibit 120A, the second  
16 page. What are the items shown on that invoice?

17 A. A projector and a lamp.

18 Q. And how much for either of those items?

19 A. For \$3,482.72.

20 MR. RUBINSTEIN: I didn't hear.

21 A. 3,482.72.

22 THE COURT: Which exhibit is on the board?

23 MR. KWOK: Exhibit 120A is on the board, your Honor,  
24 page 2.

25 Q. What is the shipping cost?

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8657KAR2

Riley - direct

1 A. \$35.

2 Q. And what is the amount minus the shipping cost?

3 A. The total amount is \$3,482.72 without the shipping cost.

4 Q. And let's look at the bottom portion of the same page. I  
5 am still staying with Government Exhibit 120A, page 2. What is  
6 reflected on the bottom portion of that page?

7 A. OK. The first Computer Aided Surgery, Inc. name, check  
8 number 10127, of \$35 pays the shipping, the \$35 shipping. And  
9 the next check number 10114 for \$3,482.72 on 3/29/2002 pays for  
10 the projector and the lamp.

11 (Continued on next page)

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865ZKAR3 Riley - direct

1 Q. And can you read off the check numbers once again?

2 A. 10114 and 10127.

3 Q. Now, let's go back to government exhibit 81 now, which is  
4 the Chase Bank account statements. Directing your attention to  
5 page 19 of the jury binders, do you have that check?

6 A. Yes, on the bank statement. On check number 10114 dated  
7 4/11, for \$3,482.72.

8 Q. Now about for check number 10127?

9 A. 10127 is for \$35, and it is also on 4/11.

10 Q. Let's zoom out on that page. And once again directing your  
11 attention to the upper right-hand corner of the page, what does  
12 that say?

13 A. It's for the checking account Computer Aided Surgery  
14 Incorporated, NIST ATP DMT program account.

15 Q. Do you know what NIST ATP DMT stands for?

16 A. National Institute of Standards and Technology, Advanced  
17 Technology Program, Digital Morse Theory.

18 MR. RUBINSTEIN: Judge, I can't hear her.

19 A. I'm sorry.

20 MR. RUBINSTEIN: I don't know if anybody else is  
21 having a problem, but she drops her voice.

22 THE COURT: Just --

23 THE WITNESS: Okay.

24 THE COURT: Don't be shy, just speak up.

25 THE WITNESS: National Institute of Standards and

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865ZKAR3 Riley - direct

1 Technology, and Advanced Technology Program, Digital Morse  
2 Theory.

3 Q. Thank you, Ms. Riley. If you could keep your voice up.

4 Let's go back to the invoices, government Exhibit  
5 120A, page three. Can we zoom in on the top of that page.  
6 What item is reflected on this invoice?

7 A. A Garmin Street Pilot, a GPS.

8 Q. How much is that?

9 A. For \$979.99.

10 Q. How about including shipping and taxes?

11 A. \$25 shipping, it's \$1,004.99.

12 Q. And what appears on the bottom of that page? Let's zoom it  
13 back out.

14 A. That, that it it was paid with -- from the Computer Aided  
15 Surgery NIST ATP DMT program account, check number 10598 for  
16 1,004.99 on 11/11, 2002.

17 Q. Let's go back now to government exhibit 81, which is again  
18 the Chase Bank statements for the CASI account, page 25 of the  
19 jury binders.

20 THE COURT: I don't -- page 25 in the jury binder?

21 MR. KWOK: That's correct, your Honor.

22 THE COURT: What's the exhibit number?

23 MR. KWOK: Exhibit number 81, your Honor.

24 THE COURT: And what page of 81?

25 MR. KWOK: It's page 25 of the jury binders on the

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865ZKAR3 Riley - direct

1 bottom of the page.

2 THE COURT: Page 25 of that exhibit?

3 MR. KWOK: That's correct.

4 THE COURT: All right.

5 Q. Do you see that check on this page, Ms. Riley?

6 A. Yes. Check 10598 for on 11/25 for \$1,004.99.

7 Q. Now, let's go back to the invoice government, Exhibit 120A,  
8 the last page. What items are shown on this invoice,  
9 Ms. Riley?

10 A. Okay. This invoice to Datavision has a digital camera with  
11 accessories.

12 Q. And how much altogether for those items?

13 A. \$1,519.95

14 Q. And whose handwriting is that on the bottom of the page, if  
15 we could show that?

16 A. Okay. It's my handwriting. It says HBR. It's saying that  
17 the American Express transaction was on 9/20 of '02.

18 Q. And how much is that transaction?

19 A. American Express is going to be -- \$1,519.95.

20 Q. Okay. Now directing your attention now to government  
21 exhibit 90, 90, looking at the statement, the closing date?

22 THE COURT: Hold on a second.

23 MR. KWOK: Government exhibit 90, your Honor?

24 THE COURT: I have to switch books here. All right  
25 exhibit 90. What page?

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865ZKAR3 Riley - direct

1 MR. KWOK: I'm showing you -- what page is that,?

2 It's page five of eight, exhibit 90.

3 THE DEPUTY CLERK: Five of eight?

4 MR. KWOK: Exhibit 90. I'm looking at the statement  
5 with closing date of October 8th, 2002, page five of eight.

6 THE COURT: All right.

7 Q. Okay. Ms. Riley, directing your attention to September  
8 20th, 2002.

9 A. There is an American express transaction to Datavision for  
10 \$1,519.95.

11 Q. Is that the same amount or different from the amount we  
12 looked at in government exhibit 120A, the invoice just now?

13 A. It's the same amount.

14 Q. And still looking at that page, still government exhibit  
15 90 --

16 THE COURT: Let me just see -- I'm sorry, I missed her  
17 explanation.

18 Q. Ms. Riley, can you --

19 THE COURT: I have the wrong page up now. Let's see  
20 where we are. This is what page? I have five of eight. What  
21 page should I be on?

22 MR. KWOK: It's page five of eight for the statement  
23 with closing date October 8, 2002.

24 THE COURT: I don't have that. That's not --

25 MR. KWOK: We could hand up an extra copy.

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865ZKAR3 Riley - direct

1 THE COURT: There is more than 1 five of eight. All  
2 right, okay. Go ahead.

3 MR. KWOK: Thank you, your Honor.

4 Q. Directing your attention again, Ms. Riley, to September  
5 20th, 2002, what does that show?

6 A. The American Express shows the transaction payment to  
7 Datavision of \$1,519.95.

8 Q. And how does that amount compare to the amount we just  
9 looked at in government exhibit 120A?

10 A. It's the same amount that's on the invoice to Datavision.

11 Q. And still staying with that page, government exhibit 90,  
12 page five of eight, what is the section heading just above that  
13 list of transactions?

14 A. Oh, Expo transactions for Dr. D. B. Karron.

15 MR. KWOK: One moment, your Honor.

16 THE COURT: This is an American Express charge?

17 THE WITNESS: Yes.

18 THE COURT: We don't have how it's paid for yet, do  
19 we?

20 MR. KWOK: I'm sorry?

21 THE WITNESS: This is --

22 THE COURT: We don't know how the credit, the American  
23 Express card credit account was paid for, do we?

24 MR. KWOK: Okay.

25 Q. Ms. Riley, can you show us how that outstanding credit card

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1 balance is paid for.

2 A. Okay, let's see. Okay, it should show up in the -- next  
3 month's payments.

4 Q. Can I direct your attention to government exhibit 110, the  
5 data base?

6 A. Yes.

7 (Pause)

8 Q. Directing your attention to page, government exhibit 110,  
9 page three of 37. What information is reflected for October  
10 18th, 2002?

11 A. That an American express electronic remittance \$5,736.51.

12 THE COURT: From what account?

13 THE WITNESS: From the CASI business account, or the  
14 business accounts from the CASI bank.

15 THE COURT: CASI business, what account? You said  
16 there were more than one, didn't you?

17 THE WITNESS: Yes. It's from the -- this report  
18 doesn't identify it.

19 THE COURT: I'm sorry?

20 THE WITNESS: This report doesn't identify the  
21 specific account, but in my -- I have a note in my data base, I  
22 know which one it's from. It's from the -- it's from one of  
23 the CASI business accounts.

24 Q. And how is this account funded, Ms. Riley?

25 A. From the NIST deposits.

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865ZKAR3 Riley - direct

1 Q. Does it have any source of funding from anywhere else?

2 A. Just a small -- a small a miscellaneous, small amount from  
3 somewhere else.

4 MR. KWOK: No further questions, your Honor.

5 THE COURT: All right.

6 MR. RUBINSTEIN: Good time to take a little recess.

7 THE COURT: Let's take the morning break and come  
8 back.

9 (Recess)

10 THE COURT: All right, let's bring in the jury. Is  
11 Dr. Karron here? You want to call Dr. Karron? No one's going  
12 to go out after him?

13 MR. RUBINSTEIN: Aye aye, sir.

14 THE COURT: You got an assistant.

15 MR. RUBINSTEIN: He's doing something else, Judge.

16 THE COURT: He has no authority.

17 MR. RUBINSTEIN: He's not admitted to the Circuit,  
18 Judge.

19 (Jury entering)

20 THE COURT: All right, please be seated.

21 (Continued on next page)

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865zkar3

1 THE COURT: Mr. Rubinstein, cross-examination.

2 CROSS EXAMINATION

3 BY MR. RUBINSTEIN:

4 MR. RUBINSTEIN: Thank you, your Honor.

5 Q. Good morning, Ms. Riley.

6 A. Good morning.

7 Q. Now, you are working for the OIG's office?

8 A. Yes, sir.

9 Q. And how long have you -- are you working there?

10 A. Since June of '97.

11 Q. And prior to that, you were an Internal Revenue Agent?

12 A. Yes, IRS.

13 Q. IRS?

14 A. Yes.

15 Q. And how long were you with IRS?

16 A. From '86 to '97.

17 Q. Now, did you do field audits or --

18 A. Yes.

19 Q. -- work inside?

20 A. Field audits.

21 Q. And when did you meet people from the federal government on  
22 this case for the first time, I mean people at the prosecution  
23 table here, first time?

24 THE COURT: Are you referring to -- one person's from  
25 the agency, Mr -- are you referring to her?

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1 MR. RUBINSTEIN: Well, let's start with her.

2 Q. Do you know the lady seated in the middle?

3 A. Yes.

4 Q. And who is she?

5 A. Rachel Ondrik.

6 Q. And the gentleman at the end?

7 A. Kirk Yamatani.

8 Q. And on this case in dealing with this ATP grant to CASI,  
9 when did you meet either or both of them for the first time?

10 A. I don't -- I don't -- I'm not sure.

11 Q. Was it in the year 2003?

12 A. I'm not sure if it was 2003, 2004.

13 Q. Was it in 2008?

14 THE COURT: She said she was not sure whether it was  
15 2003 or 2004.

16 Q. Well, do you have anything that could refresh your  
17 recollection as to when you met these people for the first  
18 time?

19 A. For this case, I don't know -- I'm not sure -- I'm not sure  
20 when that would be.

21 Q. All right. When is the -- before you came here to  
22 testify -- you're from another state, correct?

23 A. Yeah, I'm from Atlanta, Atlanta region.

24 Q. Okay, from the Atlanta region. When did you come here to  
25 testify on this case?

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- 1 A. For this?
- 2 Q. Yeah.
- 3 A. I came -- you mean for this week for the trial or --
- 4 Q. No. When did you come from Atlanta, Georgia, right;
- 5 Atlanta, Georgia, right?
- 6 A. For the trial, I came Monday.
- 7 Q. Before you came Monday, were you here in preparation for
- 8 your testimony on this trial?
- 9 A. Yes.
- 10 Q. And when did you come for the first time for your
- 11 preparation for this trial?
- 12 A. That I'd have to look back. I'm not sure.
- 13 Q. Well, was it a month ago, two weeks ago?
- 14 A. For preparation for the trial, it would've probably been
- 15 maybe the end of April.
- 16 Q. And you stayed; you didn't commute back and forth to
- 17 Atlanta, Georgia, correct? Did you commute back and forth
- 18 while you were preparing for this trial?
- 19 A. Yes.
- 20 Q. And how long did you stay when you came sometime in April?
- 21 A. For a day.
- 22 Q. And then you would go back?
- 23 A. Yes.
- 24 Q. And then you would come back again?
- 25 A. Yes.

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1 Q. For another day?

2 A. Yes.

3 Q. About how many trips, day trips did you make, ma'am?

4 A. I think maybe three.

5 Q. And did you have telephone contact with either the agent  
6 that you pointed -- the agents you pointed out or anybody in  
7 the U.S. Attorney's Office?

8 THE COURT: When?

9 Q. Between April when you started coming here?

10 A. Yes.

11 Q. And how often would you have contact?

12 A. Well, Kirk and Rachel work in the same office I do.

13 Q. Okay. So you would see them in Atlanta?

14 A. If we all happened to be in that day.

15 Q. Well, did you have an interview with them, with Kirk and  
16 Rachel on April 22nd, 2008?

17 A. I could have. I'm --

18 Q. Well, would meet with you in Atlanta, Georgia or would they  
19 meet with you here in New York?

20 A. For trial prep?

21 Q. For trial prep.

22 A. It would -- it --

23 THE COURT: What was your answer?

24 A. For -- how do we define trial prep? I mean, I can meet at  
25 either -- I mean for trial prep, I would come up and meet with

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1 Steve.

2 Q. Mr. Kwok, the Assistant U.S. Attorney, correct?

3 A. Yes.

4 Q. When you met with Rachel did you --

5 MR. RUBINSTEIN: Let me just approach the Government  
6 for a moment, your Honor.

7 Q. When did you meet Mr. Kwok for the first time?

8 A. I'm not sure.

9 Q. Was it prior to 2008?

10 A. Prior to 2000 -- I'm not sure when I met him.

11 Q. Now, you, as member of the Office of the Inspector General,  
12 you're in the civil portion of that office, correct?

13 A. I'm in the audit portion of that office.

14 Q. And is that civil or criminal end?

15 A. Neither. It's -- I do -- I normally do audits.

16 Q. And the two agents here are?

17 A. Investigators.

18 Q. Investigators. In the criminal division?

19 A. Yes -- well, whatever, civil or criminal.

20 THE COURT: Is there a criminal division and civil  
21 division?

22 THE WITNESS: No, no. There's only -- there's -- they  
23 handle -- I think -- I understand they handle both.

24 Q. You understand they're called special agents, correct?

25 A. Yes.

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1 Q. So you understand that they have the power to arrest  
2 people, correct?

3 A. Yes.

4 Q. Now, I asked you yesterday on the voir dire if you had any  
5 documents that you used in preparing your report in July of  
6 2003, the first report that you prepared here?

7 A. Yes.

8 Q. And did you have any documents?

9 A. Yes.

10 Q. Did you review those documents between yesterday and today?

11 A. Yes.

12 Q. Do you have them with you?

13 A. Um, I -- my computer. I don't have a printed copy of them.

14 Q. Well, did you print a copy out in 2003, in June or July of,  
15 or August of 2003, while you were preparing your first audit?

16 A. I had printed copies of the documents. Yes, I got printed  
17 copies of the documents somewhere.

18 THE COURT: On the computer, the computer documents;  
19 is that what you're saying? Or are you talking about the  
20 documents you -- any documents you inspected at the offices of  
21 CASI?

22 THE WITNESS: I've got either -- some of the documents  
23 I have are computer documents and some of the documents I have  
24 have been printed.

25 THE COURT: By?

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1 THE WITNESS: By -- I don't know if it was by me or by  
2 CASI, I mean because it was 2003.

3 THE COURT: Were they printed by computer -- out of  
4 the computer?

5 THE WITNESS: They were printed, and I had computer  
6 records that were provided by CASI, copies of some computer  
7 records and some of them were printed and some of them were  
8 not.

9 THE COURT: So some of them were printed off CASI's  
10 computer?

11 THE WITNESS: Possibly some.

12 THE COURT: Some were printed off your computer?

13 THE WITNESS: Possibly, yes.

14 THE COURT: Well, not possibly.

15 THE WITNESS: Yes.

16 THE COURT: Yes or no?

17 THE WITNESS: Yes, yes. It could be at the -- it  
18 could be either one. I mean --

19 THE COURT: I'm --not possibly. Yes or no.

20 THE WITNESS: Off the top of my head, I don't remember  
21 which documents were printed and given to me or which documents  
22 I got back to Atlanta.

23 THE COURT: They were either printed --

24 THE WITNESS: Yes.

25 THE COURT: -- off the CASI's computer --

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1 THE WITNESS: Yes.

2 THE COURT: Or off yours?

3 THE WITNESS: Or me.

4 THE COURT: All right.

5 MR. KWOK: Could we have a sidebar, your Honor?

6 THE COURT: No, you can not.

7 BY MR. RUBINSTEIN:

8 Q. Now, so you did have what's called the hard copies of items  
9 that were on the computer, correct?

10 A. Some of --

11 THE COURT: She's answered that.

12 A. Yes.

13 Q. And where are those hard copies that you obtained in the  
14 summer of 2003?

15 A. They're in the audit file.

16 Q. And where is the audit file?

17 A. Here.

18 Q. All right. And have you turned that over to the  
19 Prosecutor?

20 A. The audit file?

21 Q. Right.

22 A. I provided copies of the documents that we had from CASI to  
23 him.

24 Q. And it's fair to say you did not have a general ledger,  
25 correct?

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1 A. I had whatever documents that CASI -- I guess it depends  
2 how you're defining general ledger there. The thing that  
3 that --

4 Q. You're saying --

5 THE COURT: Letter her finish her answer.

6 A. The number, the numbers that -- the number that you're  
7 referring to came from the books and records provided to me by  
8 CASI's representative Frank Spring, Joan Hayes, Bob Benedict.  
9 Dr. Karron was aware of the documents that they provided, and  
10 there's, there's summaries by budget category of expenses.  
11 Those numbers were taken from, from the -- I guess it would be  
12 the like the profit loss statement.

13 Q. The summaries?

14 A. Summaries.

15 Q. Right?

16 A. Well, it's -- there's also -- because we used different  
17 records for 2003, they may not have been printed. They may  
18 still be on a disk somewhere.

19 Q. You're a CPA, are you not, ma'am?

20 A. Yes.

21 Q. And you know what a general ledger is, do you not?

22 A. Yes.

23 Q. And tell the jury what a general ledger is?

24 A. A general ledger is the ledger of accounts and how the  
25 costs are categorized by the accounting system.

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1 Q. Does a general ledger reflect every transaction made by the  
2 organization?

3 A. Yes, it should.

4 Q. It should?

5 THE COURT: Should.

6 Q. And if there are changes made or adjustments, sometimes  
7 there are adjustments because --

8 A. Yes, there are adjustments.

9 Q. -- something is missed or some income is missed, correct?

10 A. Yes.

11 Q. Where would those adjustments be reflected?

12 A. They would be reflected in the general ledger, but they  
13 should also be carried forward to the profit and loss  
14 statements.

15 Q. Now, you never saw a general ledger here, correct? What  
16 you just described, did you ever see that at any time from June  
17 of 2003, to today?

18 A. I've gotten the, whatever the Quick Book records that they  
19 provided to me.

20 Q. You know that their records that they provided to you were  
21 summaries; you just testified to that, correct?

22 THE COURT: Objection.

23 THE WITNESS: But it's some of the --

24 THE COURT: One question you're asking. That's a  
25 double question. Ask your single question, Mr. Rubinstein, so

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1 it's clear what she's being asked and what she's answering to.

2 Q. Is it a fact that what you were supplied were summary  
3 charts?

4 A. I was provided summaries, but I also saw the support for  
5 the summaries.

6 Q. You made copies of those support for the summary?

7 A. I don't know the -- I don't remember. I think that there  
8 should be somewhere, but I don't remember specifically.

9 Q. Do you recall -- you met with a man named Mark Spitz,  
10 correct -- Mel Spitz?

11 A. Mel Spitz, yes.

12 Q. And he was introduced to you as the new auditor for CASI  
13 LLC?

14 A. Yes.

15 Q. Correct? And you met him sometime in December of 2003,  
16 right?

17 A. Yes.

18 THE COURT: I thought we're talking about June, July  
19 2003, Mr --

20 MR. RUBINSTEIN: We were.

21 THE COURT: So now we're moving to December. Okay. I  
22 just want --

23 MR. RUBINSTEIN: Two years later.

24 THE COURT: All right, okay. So she's oriented all  
25 right.

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1 MR. RUBINSTEIN: Well get her back to July, Judge.

2 We'll get her back to Atlanta too.

3 THE COURT: I hope we're finished with July.

4 Q. Did Mr. Spitz provide you with two computer disks?

5 A. He provided me with new books and records.

6 Q. Did he provide you with --

7 A. I don't remember if there were two disks or not.

8 Q. Well, did you look at what he had provided you with?

9 A. Yes, I did.

10 Q. Did they -- did what Mr. Spitz provided you with contain a  
11 general ledger?

12 A. He provided expenses by budget category as -- I don't -- I  
13 don't remember if it was necessarily --

14 THE COURT: Was it in the form of a proposed general  
15 ledger or a general ledger of any sort, or is it just proposed,  
16 a summary of --

17 THE WITNESS: Yes.

18 THE COURT: -- the total expense; which was it?

19 THE WITNESS: Yes, he provided -- he provided us a  
20 general ledger and he provided summaries of expenses.

21 Q. And did you utilize his documents, in any way, in creating  
22 the financial records that you relied upon?

23 A. Yes.

24 Q. And we have before us in evidence Exhibit 110 and 111. Are  
25 you -- do you recall what those are, ma'am?

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1 A. 110, okay. Yes.

2 Q. And when did you create those exhibits 110 and 111 that's  
3 in the books that we all have, the jurors and what have you?

4 A. In 2004 or -- yeah 2004, 2005.

5 Q. Isn't it a fact, ma'am, that you created them in  
6 preparation for this trial?

7 A. I created them at the request from the request of  
8 investigations.

9 Q. Pardon?

10 A. I created them at the request of investigations.

11 THE COURT: Who investigation?

12 THE WITNESS: From Rachel or Kirk provided me with the  
13 records I had subpoenaed.

14 THE COURT: I'm sorry?

15 THE WITNESS: From the, from our investigators they  
16 had subpoenaed the checks, corroborated this from the banks,  
17 the subpoenaed checks.

18 Q. And, in fact, you did that in May of 2008, about a week or  
19 two before -- a week before the trial started, right?

20 A. No. These were created -- this, the data base was created  
21 prior to that. I was still -- did some analysis on the account  
22 because it had been created.

23 THE COURT: When was this record originally created  
24 that you're talking about here in the computer, 2004, 2003,  
25 2005?

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1           THE WITNESS: It was created -- it was created in  
2 two -- I'm not -- because -- I've got a couple data bases. It  
3 was created sometime in 2004, 2005. I would have to look back  
4 and see the exact -- look at my time, look to see the exact  
5 time it was created.

6           THE COURT: That's satisfactory. Now go ahead.

7 Q. Now, did you examine the CASI, prior to them receiving you  
8 or any member, to your knowledge, of the Office of The  
9 Inspector General --

10          MR. KWOK: Objection.

11 Q. -- examine CASI prior to them receiving the actual grant on  
12 October 1st --

13          MR. KWOK: Objection.

14 Q. -- 2001?

15          THE COURT: Objection to the form of the question is  
16 sustained. You're not asking for her knowledge, so --

17          MR. RUBINSTEIN: Okay.

18          THE COURT: Please.

19 Q. Is it a -- does the --

20          MR. RUBINSTEIN: Well, she is an expert, your Honor.  
21 She was qualified as an expert.

22          THE COURT: Not an expert on that, not on when other  
23 people might have done things.

24 Q. Did you examine, on behalf of NIST, CASI prior to the  
25 granting, prior to them receiving the grant?

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1 THE COURT: Before they received the grant, did you  
2 examine -- have anything to do with CASI?

3 THE WITNESS: No, no.

4 THE COURT: Okay.

5 Q. It's a fact that under -- you're governed by Title 15, CFR  
6 14, correct?

7 A. For the grant, yes.

8 Q. Yes?

9 A. Yes.

10 Q. And as part of your responsibility of the Office of the  
11 Attorney General, the principal officer of the recipient of the  
12 grant is evaluated for financial responsibility, correct?

13 MR. KWOK: Objection.

14 THE COURT: By the Attorney General?

15 Q. No, by the Office of the Inspector General.

16 THE COURT: Do you know?

17 THE WITNESS: They submit -- yeah. They --

18 THE COURT: Do you know?

19 THE WITNESS: That doesn't come to me. That goes to  
20 another section of the organization.

21 Q. Isn't it a fact that the key officials are examined as to  
22 their financial responsibility?

23 THE COURT: Do you know that?

24 THE WITNESS: They're --

25 THE COURT: Do you have any knowledge of that?

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1 THE WITNESS: They do a background check before they  
2 give the awards I think, yeah.

3 THE COURT: You think?

4 THE WITNESS: Yeah, they have a section for NIST  
5 grants file, they have background information, financial stuff.

6 THE COURT: You're not involved in that?

7 THE WITNESS: I'm not involved in that.

8 THE COURT: All right.

9 Q. But you're familiar with the fact that under that section,  
10 the question of whether or not OIG reviews the applicant as to  
11 their responsibility and as to their honesty and their  
12 financial stability --

13 MR. KWOK: Objection.

14 Q. -- is the officials, correct?

15 MR. KWOK: Objection.

16 THE COURT: Do you have any knowledge -- objection --  
17 I think this is not the right witness for this, Mr. Rubinstein.

18 MR. RUBINSTEIN: Judge, they want Dr. Karron to know  
19 every line in this statute.

20 THE COURT: I don't want to have an argument in front  
21 of the jury of this sort. If you want to raise it, you can  
22 raise it at the side bar, but you can probably get a  
23 stipulation.

24 Q. Are you familiar with Chapter Eight of 15 CFR, 14?

25 A. What is it talking about?

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1 THE COURT: If you want to put the -- if you want to  
2 put something from the Code of Federal Regulations in, you can  
3 put it into evidence. Let's not waste our time with this  
4 witness on this subject.

5 MR. RUBINSTEIN: I'd like to mark it then for  
6 identification at this time as defendant's AAA.

7 THE COURT: Show it to the government and --

8 MR. RUBINSTEIN: Yes.

9 THE COURT: Give it to the Clerk and I'll have it  
10 marked.

11 MR. RUBINSTEIN: I marked it, Judge.

12 THE COURT: What?

13 MR. RUBINSTEIN: I marked it.

14 THE COURT: They Code of Federal Regulations,  
15 paragraph eight, 14, is that correct?

16 MR. RUBINSTEIN: Your Honor, it's chapter eight.

17 THE COURT: What have you marked it as?

18 MR. RUBINSTEIN: AAA.

19 THE COURT: Defendant's AAA?

20 MR. RUBINSTEIN: Yes. It's chapter eight, referring  
21 to page five, your Honor.

22 THE COURT: Just chapter eight, page five?

23 MR. RUBINSTEIN: And chapter nine.

24 THE COURT: Not paragraph 14.

25 MR. RUBINSTEIN: Chapter nine, page seven.

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1 THE COURT: I'm sorry, I didn't hear that.

2 MR. RUBINSTEIN: Chapter nine, page seven.

3 THE COURT: Eight code of Federal regulations, chapter  
4 nine, page seven; is that correct?

5 MR. RUBINSTEIN: Your Honor --

6 THE COURT: We could do this outside the presence of  
7 the jury.

8 MR. RUBINSTEIN: Yes, your Honor.

9 BY MR. RUBINSTEIN:

10 Q. As part of your responsibility as a member of the Office of  
11 the Inspector General, you're provided with all of these 15 CFR  
12 sections, correct?

13 MR. KWOK: Objection.

14 THE COURT: Objection sustained. Now let's get ahead  
15 with this. It doesn't bear on this witness' testimony. Come  
16 on.

17 MR. RUBINSTEIN: Judge, they put on the board --

18 MR. KWOK: Objection.

19 MR. RUBINSTEIN: -- 15 CFR.

20 THE COURT: You could put up on the board CFR too.  
21 All you got to do is move it into evidence.

22 MR. RUBINSTEIN: It's in evidence, Judge. Could you  
23 put Exhibit 4 --

24 THE COURT: What is in evidence?

25 MR. RUBINSTEIN: Exhibit 4, Government's exhibit 4.

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1 THE COURT: All right. If it's already in evidence,  
2 then why are we marking this other thing for?

3 MR. RUBINSTEIN: Because it's only referenced in  
4 Exhibit 4. This it page 11, your Honor.

5 THE COURT: All right.

6 MR. RUBINSTEIN: 7 or 11, let me see.

7 THE COURT: Do you want to have it marked in evidence,  
8 offer it in evidence.

9 MR. RUBINSTEIN: Pardon, Judge?

10 THE COURT: Look, we're interrupting the  
11 cross-examination here. Let's get this thing moving. We've  
12 had a half-hour of examination and we haven't yet gotten to  
13 anything about this witness' testimony. Let's get on.

14 BY MR. RUBINSTEIN:

15 Q. When were you first contacted about the audit of the --  
16 review what was allowable for CASI Corporation, CASI, Inc.?

17 A. End of April -- approximately May of 2003.

18 Q. And who notified you?

19 A. Our office got a request from NIST grants office to do an  
20 audit, to review the financial status of CASI.

21 Q. And did you -- and did you speak to a person from NIST,  
22 personally?

23 A. I spoke to Hope and to B.J., Hope Snowden, and who is the  
24 grants officer, and B. J. Lide, who was the program officer.

25 Q. And did --

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1 THE WITNESS: I think Jane Orthwein, who is also a  
2 program officer.

3 THE COURT: I'm sorry?

4 THE WITNESS: And to Jane Orthwein, who is also a  
5 program officer.

6 THE COURT: Who? What's the other name?

7 THE WITNESS: B. J. Lide and Jane Orthwein, I think  
8 it's O-r-t-h-w-e-i-n.

9 THE COURT: And is there a third person?

10 THE WITNESS: I could've talked to one of Hope's  
11 supervisors, which --

12 THE COURT: All right.

13 THE WITNESS: Marilyn.

14 Q. Did you have a meeting with these people in person or over  
15 the telephone or what?

16 A. I had a meeting with them in person.

17 Q. All three of them?

18 A. Yes.

19 Q. And did you subsequently -- who is William F. Bedwell?

20 A. He was the regional Inspector General for Atlanta at the  
21 time.

22 Q. And did he assign you to investigate the expenses of CASI?

23 A. He would've provided the audit assignment when the audit  
24 started in May of 2003.

25 Q. And when did the audit actually start?

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1 A. Well, when I got there when, when our office decided to  
2 perform the audit, I called to request a meeting with Dr.  
3 Karron, with CASI representatives, and they were redoing the  
4 books.

5 THE COURT: What's the date? All we need is the date  
6 when, that's all, that's all he asked.

7 THE WITNESS: I don't know -- okay. I don't -- in May  
8 of 2003. I don't know the specific date.

9 Q. Did you have that -- is that called an entrance conference?

10 A. We had the entrance conference on June 18th when I arrived  
11 in New York.

12 Q. And who did you meet with?

13 A. Dr. Karron and Bob Hayes and Joan Benedict, and I don't  
14 remember Frank Spring was there or not.

15 Q. And that was at -- you met with them at the headquarters of  
16 CASI?

17 A. Yes.

18 Q. Correct? And CASI -- what organization had received the  
19 grant from NIST, the ATP grant from NIST?

20 A. I think it was Computer Aided Surgery, Incorporated.

21 Q. And you ascertained that Dr. Karron was the principal  
22 officer of that corporation?

23 A. Yes.

24 Q. Were you aware, when you began the audit, what the official  
25 name of CASI was?

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1 A. It was at one time CASI, Computer Aided Surgery Informatics  
2 Corporation, and so they preferred to be called CASI. So  
3 that's normally the name that I used for them.

4 Q. Were they incorporated; was it then as CASI, Inc?

5 A. Oh, I think it could have been, yes. Maybe.

6 Q. Well, are you aware whether or not at any time they changed  
7 their name from CASI, Inc. to CASI LLC?

8 A. Yes, they had changed their name to CASI LLC.

9 Q. Now, when you went to the location at 300 East 33rd Street,  
10 apartment, it was apartment 1N, correct?

11 A. I think that's the address.

12 Q. And you had made an appointment before you got there?

13 A. Yes.

14 Q. And when you arrived -- approximately, what time did you  
15 get there?

16 A. I don't remember if that was a morning or evening. I had  
17 come over from -- I had taken the train from D.C, and I don't  
18 remember if I went -- if it was in the morning appointment or  
19 evening appointment or afternoon appointment.

20 Q. And for sure Joan Hayes was there, correct?

21 A. Yes, I think Joan Hayes was there.

22 Q. Bob Benedict was there?

23 A. Yes.

24 Q. And Dr. Karron was there?

25 A. Yes.

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1 Q. Now, were there other people present when you arrived  
2 there?

3 A. Yes. I think probably Jim Cox was there, and maybe Mat  
4 Rothman.

5 Q. And they were identified to you as employees of CASI?

6 A. Yes.

7 Q. They were -- you were informed they were working on the ATP  
8 project?

9 A. Yes.

10 Q. And when did you -- had you talked to Joan Hayes prior to  
11 your visit on June 18, 2001?

12 A. I don't remember specifically if I talked to her. I could  
13 have and, in scheduling the appointment, because they were  
14 trying to redo the books, and so we had rescheduled. So I'm  
15 not sure who I -- if I spoke directly with Dr. Karron for that  
16 or if I talked to one of his representatives.

17 Q. And how long did this visit take, this first visit?

18 A. It started I think probably on Wednesday of one week and  
19 through Thursday or Friday the next week.

20 Q. Now this -- what room did you meet these three people in,  
21 Dr. Karron, Bob Benedict --

22 A. At CASI's, at the CASI, Dr. Karron's apartment, CASI  
23 office, that, the first meeting?

24 Q. Yes.

25 A. Okay. The first meeting was there at the business.

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865zkar3

RILEY - CROSS

1 Q. At the business. And it was in the business section of the  
2 apartment?

3 A. It was in the living room, I guess the living room of the  
4 apartment, the business.

5 Q. You say living room. Was there, were there couches in  
6 there?

7 A. No, there were computers in there.

8 Q. Were there furniture that you would expect to find in what  
9 would commonly be called a living room?

10 A. No.

11 Q. And, approximately, how many computers were there?

12 A. I think there were four.

13 Q. And how large were they?

14 A. They were, they were large. I mean, they -- I know a  
15 couple of them had two monitors. I don't remember if all four  
16 of them had two monitors.

17 Q. And were there work areas for people to work at that had  
18 smaller computers?

19 A. There were -- there were -- I, I don't remember. There  
20 was, there were -- I don't remember the size of all the  
21 computers.

22 Q. But there was also a bedroom there, correct?

23 A. Yes.

24 Q. And --

25 MR. KWOK: Objection, relevance.

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1 THE COURT: I will allow the question. I'll allow the  
2 question. Is there a bedroom in the apartment?

3 THE WITNESS: Oh, I'm sorry. Yes.

4 Q. I'm going to show you what's being marked as defendant's  
5 BBB for identification?

6 THE COURT: 3 B's?

7 MR. RUBINSTEIN: 3 B's, yes, your Honor.

8 Q. And ask you if you recognize what is depicted in that  
9 document?

10 MR. KWOK: Your Honor, may we approach to look at it?

11 THE COURT: There are four -- it's more than one  
12 picture.

13 MR. RUBINSTEIN: Yes, your Honor.

14 THE COURT: Six pictures.

15 THE WITNESS: Yeah, it's -- it's the CASI office  
16 apartments.

17 Q. Thank you.

18 THE COURT: All of it, the entire apartment?

19 THE WITNESS: It's the section that was known as the  
20 living room of the apartment, would have been the living room  
21 section of the apartment.

22 THE COURT: Pictures of the part of the living room?

23 THE WITNESS: Yeah, it's the -- it's a small living  
24 room. It has computer desks around it.

25 THE COURT: Let's get on with this, Mr. Rubinstein,

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1     instead of --

2                 MR. RUBINSTEIN:   Yes, Judge.

3                 THE COURT:   Let's move it on.   We've got to get to the  
4     testimony and what she's testified about, now let's move it  
5     along.

6                 MR. RUBINSTEIN:   We offer this in evidence.

7                 THE COURT:   We've been here almost 45 minutes on this  
8     cross-examination.

9                 MR. RUBINSTEIN:   The government told me they were  
10    going to be 45 minutes long.

11                THE COURT:   Let's move it along.

12                MR. RUBINSTEIN:   I want to offer BBB in evidence.

13                MR. KWOK:   No objection.

14                THE COURT:   No objection?   BBB is received in  
15    evidence.

16                (Defendant's Exhibit BBB received in evidence)

17                MR. RUBINSTEIN:   Put this on the Elmo, please.

18                THE COURT:   I guess you have to -- you have to move it  
19    sideways too for the jury to get any idea.   That's upside down.  
20    Q.   Now, you see the screen in the bottom as you face the  
21    picture on the bottom right portion; you see what's depicted  
22    there?

23    A.   Yes.

24    Q.   Pardon?

25    A.   The screen, yes.

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1 Q. And did you see that screen in the apartment?

2 A. I don't recall if I saw the screen or not. They did a  
3 presentation, but I was thinking it was on the monitor,  
4 computer monitors, but I don't recall if I saw.

5 Q. And did you see in the, in 120A they presented an exhibit  
6 that sort of looked like this item over here, a lamp with a  
7 projection; did you see that?

8 A. At the apartment?

9 Q. At the apartment.

10 A. I don't recall if I saw that at the apartment.

11 THE COURT: Well, when you identified this as Dr.  
12 Karron's apartment, does it look like the apartment at the time  
13 that you viewed it in July 2003; is that a fair representation  
14 of the apartment and equipment in it at the time in July 2003?

15 THE WITNESS: It, it had a -- it had -- I don't  
16 remember the -- if I saw the screen, but the other stuff is  
17 probably so.

18 THE COURT: What?

19 THE WITNESS: The other, the rest of it probably.

20 THE COURT: Not probably.

21 THE WITNESS: Oh, yeah.

22 THE COURT: You know when this picture was taken?

23 THE WITNESS: No.

24 THE COURT: All right. Well, does it --

25 THE WITNESS: Yes.

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1 THE COURT: Therefore, that's why I'm asking you the  
2 question.

3 THE WITNESS: Yes. It looks -- yeah, but I was --

4 THE COURT: Not the apartment itself, the equipment in  
5 it.

6 THE WITNESS: Um, yes, they had similar -- they would  
7 have had -- except for the -- I don't know about the -- I don't  
8 remember about the screen -- but it had -- did have computers  
9 like that and things under the deck and all the things.

10 THE COURT: All right.

11 (Continued on next page)

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8657KAR4

Riley - cross

1 BY MR. RUBINSTEIN:

2 Q. And there was shelving around the room?

3 A. There was shelving.

4 Q. And it wasn't for knickknacks, right? It was for  
5 computer-related items, correct?

6 THE COURT: That calls for a conclusion. Let's go  
7 ahead.

8 Q. Well, you as the auditor, were you interested in  
9 determining whether or not government money was spent on  
10 computer-related items?

11 A. They had a budget for equipment.

12 Q. Now, were you at the apartment when the -- the prosecutor  
13 read to you a whole list of items that were seized. Were you  
14 present when the items were seized?

15 A. No.

16 Q. At that meeting in June of 2001 with Joan Hayes and Bob  
17 Benedict, who did you understand Bob Benedict was?

18 A. June of --

19 Q. June of 2003 when you were conducting your audit.

20 A. He was the project manager.

21 Q. And while you were in the -- while you were at CASI, were  
22 you provided with any documentation?

23 MR. KWOK: Time frame, your Honor.

24 A. Documentation for what?

25 MR. KWOK: Time frame.

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Riley - cross

1 THE COURT: Time frame.

2 MR. RUBINSTEIN: When she was at the apartment.

3 THE COURT: Which are you talking about? July?

4 MR. RUBINSTEIN: I said June, Judge.

5 THE COURT: All right. In June.

6 MR. RUBINSTEIN: First I said 2001 and then I said  
7 2003.

8 THE COURT: I don't want to hear that. I want to hear  
9 her give some testimony that's accurate and straight.

10 THE WITNESS: He said documents.

11 Q. Any financial statements?

12 A. I was given whatever the Quick Book records were that they  
13 provided to me.

14 Q. Who is they?

15 A. Probably Joan Hayes, Bob Benedict, Frank Spring, Dr.  
16 Karron. I don't know who specifically handed me the  
17 information.

18 Q. Was the information ready for you, or did they have to  
19 print it out from one of the computers?

20 A. They were still in the process of redoing the second set of  
21 books.

22 THE COURT: Did they hand it out to you or not?

23 THE WITNESS: They gave me some of it in computer and  
24 some of it in hard copy.

25 Q. And were you shown the system that was used by the

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Riley - cross

1 principal -- by the people at CASI to keep their records?

2 A. Yes.

3 Q. And in fact every check was scanned into this system,  
4 correct?

5 A. Yes, they scanned in checks and invoices.

6 Q. And the checks, invoices and backup, correct?

7 A. Yeah, the invoices would be the backup. They scanned into  
8 the computer and destroyed the original invoice.

9 Q. And in your audit of reviewing whenever a check was issued  
10 and cashed was there an invoice that backed up that particular  
11 item?

12 A. I don't remember specifically what it looked like, what  
13 that record looked like.

14 Q. I'm not asking you what the record looked like, ma'am.

15 A. You're asking me if there was a check backing up the  
16 invoice attached to each invoice.

17 Q. Right.

18 A. I don't remember specifically in the instance of CASI if  
19 they had copies of checks and copies of invoices attached to  
20 each other. It's possible, but I don't specifically recollect  
21 if they did or not.

22 Q. Well, if they had an expense that they wrote a check for  
23 and there was no invoice as a backup, would you make a note of  
24 that as an auditor?

25 A. Yes.

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Riley - cross

1 Q. And in fact in this case you made no notes of missing  
2 invoices to match with checks, correct?

3 A. Right, I don't think so, right.

4 Q. Now --

5 A. For the sample reviewed.

6 Q. That was the first review, the sample review, correct?

7 A. Both of them -- yes, they would have sample review.

8 Q. Did you ask questions of Dr. Karron?

9 A. Yes.

10 Q. And did you ask him for specific information?

11 A. Yes.

12 Q. And give us an illustration of something you asked Dr.  
13 Karron for.

14 THE COURT: If you remember.

15 A. Well, I know I asked him what the employees did. That kind  
16 of information? I mean --

17 Q. Did he respond to you?

18 A. Yes.

19 Q. Did he respond to any question you asked him?

20 A. I think so.

21 Q. Did he offer to let you use the -- excuse me one second --  
22 and did they actually show you on a computer screen documents  
23 that had been stored in the computer --

24 A. Yes, yes.

25 Q. -- to show the expenses that were incurred and the backup

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8657KAR4 Riley - cross

1 why it was legitimate? Right?

2 A. They showed, documents --

3 MR. KWOK: Objection to form.

4 Q. Well, backup to explain what the expense was for.

5 THE COURT: Overruled. Could I hear the question

6 back.

7 (Record read)

8 THE COURT: It doesn't sound like a complete answer.

9 THE WITNESS: There was an objection, so I didn't know  
10 if you --

11 A. They showed documents. They showed copies of invoices that  
12 they had scanned into the computer.

13 Q. Now, you used as a starting point -- did you use as a  
14 starting point for your audit what was the schedules of the  
15 most recently approved budget?

16 A. Yes.

17 THE COURT: What you were told was the most recently  
18 approved budget.

19 THE WITNESS: Yes, what I was told was the most  
20 recently approved budget. I think it was amendment 2.

21 Q. And in fact when you were in the apartment -- withdrawn.

22 You became aware during the course of your audit that  
23 there were certain expenses attributable to work that had been  
24 done in the apartment, shelving and installation of wiring and  
25 things of that nature, correct?

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Riley - cross

1 A. Yes. Yes.

2 Q. Did you see when you were in that apartment anything that  
3 you would describe as construction?

4 A. The shelves and the desks, the tables.

5 THE COURT: Were they under construction?

6 THE WITNESS: No, they weren't under construction at  
7 the time.

8 Q. The shelves and the desks. And is it fair to say that you  
9 disallowed that expense?

10 A. Yes.

11 Q. And are you familiar with -- and on what basis did you  
12 disallow that expense?

13 A. It wasn't allowable per the budget.

14 Q. Equipment was allowable, was it not?

15 A. I didn't question the equipment amount up to the budget  
16 category.

17 Q. Well, are you aware that under the category of equipment  
18 you are permitted to do a certain amount of what you would call  
19 site preparation?

20 A. They still had more cost -- the equipment was still over  
21 the budget without that cost, so saying whether that was  
22 allowable or not allowable was irrelevant as to whether it  
23 would be qualified as allowable equipment costs.

24 Q. The money was spent -- in other words, are you saying now  
25 that whatever changes were made, physical changes were made to

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Riley - cross

1 the apartment, were made for the benefit of the program for  
2 carrying out the project?

3 MR. KWOK: Objection.

4 THE COURT: I didn't hear her say that.

5 Q. Well, are you familiar with the fact that under equipment  
6 you are permitted -- "ATP funds may, however, be used for  
7 construction of experimental research and development  
8 facilities to be located within a new or existing building,  
9 provided the equipment or facilities are essential for carrying  
10 out the project. If such costs are proposed, include below and  
11 provide justification." Are you familiar with that?

12 A. Yes.

13 Q. And salaries, you reviewed the salaries, did you not?

14 A. Yes.

15 Q. And what was your -- you disallowed salaries, did you not,  
16 as part of you coming to this half a million dollar figure,  
17 right?

18 A. Which figure are we talking about now?

19 Q. Salaries.

20 A. Are we talking about the July report or the December  
21 report?

22 Q. In your testimony did you say that you disallowed --

23 THE COURT: No, you've got to give her some time  
24 frame, Mr. Rubinstein.

25 Q. Well, how about did there come a time that you in your

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Riley - cross

1 evaluation and analysis of CASI, that you evaluated the  
2 salaries that were being paid?

3 A. Yes.

4 Q. And when was that?

5 A. In the December 2003 review.

6 Q. And at that time did you make a determination as to how  
7 much salary was approvable?

8 A. Yes.

9 Q. How much salary was budgeted for CASI for the first year,  
10 October 1, 2001 to September 30, 2002, the first year of the  
11 grant?

12 A. I would have to look back at some documentation to know the  
13 specific number.

14 Q. Pardon? Do you have anything that --

15 A. Dr. Karron's salary was budgeted 175,000, and the other  
16 employees' salaries were budgeted at 150,000.

17 Q. And how much of Dr. Karron's \$175,000 salary did you allow?

18 A. I think 85 percent of it. Is that right?

19 THE COURT: You look at the papers and tell us. Don't  
20 say you think.

21 MR. KWOK: Your Honor, I don't know whether  
22 Mr. Rubinstein is asking per the audit or per the bank records  
23 analysis.

24 MR. RUBINSTEIN: I'm asking her audit, what she  
25 allowed.

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Riley - cross

1 THE COURT: Which audit?

2 MR. RUBINSTEIN: In any audit.

3 THE COURT: 2004? July 2003? Which audit? The final  
4 audit? The one that went up on the board?

5 Q. Well, did your numbers change between your first audit and  
6 your second audit?

7 A. The first -- the numbers -- the number on the first audit  
8 didn't get that detailed. The short report number of the  
9 205,000 number came from the revised books, how much that CASI  
10 said it spent for the NIST project, excluding the expenses that  
11 it had for CASI, the difference between that and the deposits.  
12 So, that number didn't come from an analysis of the specific  
13 budget cost categories. The December report, after I met with  
14 Mel Spitz, was an analysis of the specific budget categories,  
15 since Dr. Karron told me he had additional new records.

16 Q. Do you want to look at the appendix to your draft report  
17 that's in evidence, which is Exhibit --

18 A. Right. And that one says --

19 THE COURT: Wait. Wait until he gives you the  
20 exhibit.

21 THE WITNESS: I'm sorry.

22 Q. 61. I'm sorry. 62. Appendix 1, page 2 of 8. Does that  
23 refresh your recollection of how much of Dr. Karron's approved  
24 salary you disallowed to come to your figure of over \$500,000?

25 A. I think 15 percent.

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Riley - cross

- 1 Q. Pardon?
- 2 A. 15 percent. The chief technical officer, right?
- 3 Q. And that was based on an hourly computation?
- 4 A. That was based on an estimate of time spent on other
- 5 activities other than the NIST grant.
- 6 Q. What activities was that?
- 7 A. The business of CASI.
- 8 Q. Is it a fact that CASI had no other business?
- 9 A. CASI was a business though.
- 10 Q. But their only project was the ATP project?
- 11 A. Right, but there would still be expenses associated with
- 12 the existence of the business.
- 13 Q. When the budget was approved, it was approved for \$175,000,
- 14 correct, salary?
- 15 A. Correct.
- 16 Q. And was there any indication of how many hours Dr. Karron
- 17 would spend in order to earn his \$175,000 on this ATP project?
- 18 A. I don't remember if they specifically had time sheets or
- 19 not.
- 20 Q. Did you determine how many hours a week Dr. Karron worked
- 21 on the ATP grant?
- 22 A. The salary, the hours don't -- it doesn't necessarily
- 23 matter the hours. It's percent of time worked.
- 24 Q. Well, what about Mr. Gurfein, was he budgeted for salary?
- 25 A. Yes.

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Riley - cross

1 Q. How much was he budgeted for salary?

2 A. I don't recall. I don't have a copy of the budget in front  
3 of me.

4 Q. So you overruled ATP that authorizes \$175,000 for Dr.  
5 Karron, correct?

6 MR. KWOK: Objection.

7 THE COURT: Objection sustained to the form of the  
8 question.

9 Q. In fact, does it refresh your recollection that Mr. Gurfein  
10 was to receive \$100,000 annual salary?

11 THE COURT: Does that refresh your recollection?

12 A. If I could see a copy.

13 Q. Why don't you look at the same page. See if it refreshes  
14 your recollection. He was the chief operating officer,  
15 correct?

16 A. Yes.

17 Q. Did that refresh your recollection of what Mr. Gurfein's  
18 salary was?

19 A. You said that it was \$100,000 according to the budget.

20 Q. And did you allow \$100,000 in costs for Mr. Gurfein?

21 A. Just because it's allowable in the budget category doesn't  
22 make it allowable --

23 THE COURT: The question is did you or didn't you.

24 THE WITNESS: I --

25 THE COURT: Yes or no?

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Riley - cross

1 THE WITNESS: I don't have the information here to  
2 tell how much was allowable.

3 THE COURT: What does your report say right on the  
4 front page?

5 THE WITNESS: It says how much.

6 THE COURT: Page 2 of 8 on the appendix.

7 THE WITNESS: Right. It says how much is questioned;  
8 it doesn't say how much was allowed.

9 THE COURT: Well, when you say it's questioned, isn't  
10 that you disallow it subject to their coming back to you to  
11 show that it was appropriate?

12 THE WITNESS: Just because there is a budget category  
13 with an allowable amount, that means they allow up to that  
14 amount if applicable to the NIST project or part of the NIST  
15 project cost. It doesn't mean you are entitled to that amount  
16 of money no matter what.

17 Q. It doesn't mean you are not entitled to it either, correct?

18 A. If it's allowable in the NIST ATP grant cost it's allowable  
19 up to that amount. Just because you have an amount in a budget  
20 for an expense doesn't mean you are entitled to that amount if  
21 you didn't have allowable costs for that amount.

22 Q. If you have a budget for \$100,000 for equipment and you  
23 spend \$100,000 on equipment for your project, is that OK?

24 A. If it's a NIST ATP project equipment.

25 Q. Well, here there is only one project, correct?

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Riley - cross

1 THE COURT: I'm sorry?

2 Q. In your audit did you find that CASI was doing any other  
3 project other than the NIST ATP project?

4 A. They were working on the NIST ATP project. They may --  
5 they also had been trying to get other awards.

6 Q. For this project.

7 THE COURT: Objection. Do you know what they were  
8 for, other awards?

9 THE WITNESS: Only the one that kept coming up from  
10 the State of New York that didn't happen.

11 Q. They wanted to get funds from the State of New York to add  
12 to this NIST ATP project, correct?

13 MR. KWOK: Objection.

14 THE COURT: Objection sustained.

15 Q. How much of Mr. Gurfein's \$100,000 salary did you disallow?

16 A. 25 percent.

17 Q. So, that would be \$25,000, correct?

18 A. Yes.

19 Q. If he got 100,000, it would be 25,000?

20 A. Yes.

21 Q. And on what basis did you reduce his salary by 25 percent?

22 A. Because of the duties that he did.

23 Q. He spent only 75 percent of his time on NIST ATP projects,  
24 is that your testimony?

25 A. Well, the things that Mr. Gurfein was doing were not

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Riley - cross

1 necessarily things for the research, they were to continue the  
2 project. So, they weren't necessarily all allowable NIST  
3 project expenditures for grant purposes.

4 Q. Well, isn't it a fact that Mr. Gurfein's salary was  
5 approved on the basis that only 75 percent of his time would be  
6 devoted to the NIST project?

7 A. Right. And so when he carried it out then he wouldn't have  
8 had --

9 Q. Are you aware of that, ma'am?

10 THE COURT: Do you know what the situation was in  
11 terms of how his salary was computed --

12 THE WITNESS: I have to see the budget.

13 THE COURT: -- for the budget?

14 THE WITNESS: I know it was a percentage of whatever  
15 his salary was was allowable.

16 Q. I am asking you, ma'am, whether or not when you made the  
17 determination and you put in your report that \$25,000 -- this  
18 is reading from appendix A, page 2 of 8 pages, it says, \$25,000  
19 of the 71,550 is questioned for the chief operating officer due  
20 to 25 percent of his time and salary being allocated to  
21 non-NIST activities. Correct?

22 A. That's what it says, yes.

23 Q. So, that he is supposed to invest 75 percent of his time to  
24 a NIST activity, according to your calculation, right?

25 A. Yes.

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Riley - cross

1 Q. But isn't it a fact that the budget specifically approved  
2 by NIST ATP provided that Gurfein was only to spend 75 percent  
3 of his time on the project?

4 A. So, it had 75 percent of his salary times that came up with  
5 a lower number than a hundred percent of his salary that was  
6 allowed for the budget.

7 THE COURT: What are you saying?

8 THE WITNESS: Well, if his -- I don't remember. But  
9 if his salary was \$100,000 a year, and NIST allowed 75 percent  
10 of that as NIST ATP for the budget, then 75 times a hundred  
11 would be \$75,000 of his salary could be reimbursed by the NIST  
12 project costs, and the other 25,000 would be paid by CASI.

13 THE COURT: Let me ask you a question. What did you  
14 understand the budget \$100,000 to be paying him? Did you  
15 expect it to be for 75 percent of his time?

16 THE WITNESS: 75 percent of the time, the salaried  
17 amount.

18 THE COURT: That's what it was in the budget.

19 THE WITNESS: That's what the budget would allow if he  
20 devoted that much time to the project, yes.

21 THE COURT: Now, so if he spent 75 percent of his time  
22 on the budget, why wasn't he entitled to the full amount of the  
23 \$100,000?

24 THE WITNESS: No, not working on the budget. But the  
25 NIST budget multiplies it out across that says \$100,000, times

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Riley - cross

1 75 percent of his time, so that would be \$75,000 that NIST  
2 would reimburse of the salary that he was paid. I'm not sure  
3 if his salary was \$100,000. Whatever his salary was, times 75  
4 percent of the time, then NIST would pay that amount.

5 Is that how that's written? I don't --

6 THE COURT: Is that how what is written?

7 THE WITNESS: The budget.

8 THE COURT: So, you are just accepting what Mr. --

9 THE WITNESS: No, I'm saying how it's written.

10 THE COURT: Well, you are the one we're asking how  
11 it's written, not him.

12 THE WITNESS: OK, I need a copy of the budget to see.

13 THE COURT: Well, you better examine a copy of the  
14 budget before you start answering questions.

15 THE WITNESS: OK.

16 THE COURT: This isn't hypothetical stuff.

17 THE WITNESS: Right.

18 THE COURT: Do you understand?

19 THE WITNESS: Yes.

20 THE COURT: All right.

21 MR. RUBINSTEIN: Why don't we turn to Government  
22 Exhibit 10B.

23 THE COURT: Do you have a copy before you?

24 THE WITNESS: Yes.

25 THE COURT: All right.

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8657KAR4

Riley - cross

1 Q. Have you reviewed that, ma'am?

2 A. Yes. Where is the thing that -- this is -- where is the  
3 thing that incorporates this part of the award or of the  
4 budget? Because for amendment 2 what it should say is if his  
5 annual salary is \$100,000, then 75 percent of that would be  
6 \$225, not \$300,000, so this should be multiplying this across.  
7 I think these are prepared by I think CASI and submitted.

8 THE COURT: 10B?

9 THE WITNESS: Yes.

10 THE COURT: Is submitted by them?

11 THE WITNESS: Is submitted by CASI to NIST.

12 THE COURT: Where is what the award approved, the  
13 budget that the award approved? Do we have that exhibit?

14 MR. KWOK: It's Government Exhibit 22, I believe, your  
15 Honor.

16 THE COURT: What?

17 DEPUTY COURT CLERK: Government 22.

18 THE COURT: 22.

19 MR. RUBINSTEIN: Your Honor, I draw. If you look  
20 at --

21 THE COURT: She is looking at 22 now. Let's stay with  
22 what she is looking at and then you can ask a question.

23 THE WITNESS: There should be something that breaks  
24 down the expenses by years.

25 MR. RUBINSTEIN: Can I ask a question, your Honor?

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Riley - cross

1 THE COURT: She hasn't answered the question yet.

2 THE WITNESS: There should be --

3 THE COURT: This is the budget that was approved.

4 THE WITNESS: There should be something that breaks  
5 down for the year one that looks similar to this, that breaks  
6 down by year one, year two, year three, instead of just all  
7 three together, and it should --

8 THE COURT: I don't follow what you're saying. But  
9 now you can see that they requested for the three years  
10 \$1,330,000, looking at 10B --

11 THE WITNESS: Yes.

12 THE COURT: -- for personnel.

13 THE WITNESS: And then looking at page 2 of this  
14 exhibit, the three year total is \$1,075,000.

15 THE COURT: So, there was some adjustment made.

16 THE WITNESS: Yes, there is some adjustment.

17 THE COURT: But you don't know what adjustment was  
18 made.

19 THE WITNESS: Mathematically this should show -- the  
20 annual salary is \$100,000. It should be three times a 100,000,  
21 times 75 percent, and that wouldn't be \$300,000, so there is a  
22 mathematical thing there.

23 Q. Are you aware that the \$325,000 allocation for salary and  
24 wages was off an amended budget that initially had \$375,000  
25 that was approved?

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Riley - cross

1 A. Yes.

2 THE COURT: You are?

3 THE WITNESS: Well, I know that this budget was  
4 adjusted, and they had moved some money to consulting to pay  
5 for George Wolberg.

6 THE COURT: What?

7 THE WITNESS: They moved some money from payroll cost  
8 to consulting costs or subcontracting cost to pay for Wolberg.

9 THE COURT: I'm trying to have you tell us what you  
10 were looking at --

11 THE WITNESS: Oh.

12 THE COURT: -- which allowed you to deduct or disallow  
13 Mr. Elisha Goldberg's salary in the amount of \$25,000. That's  
14 what I'm asking you to show us, what you were relying on to do  
15 that. Now, would you show it to us.

16 THE WITNESS: OK. The supporting document that shows  
17 the breakdown of costs by year, that looks similar to 10B, has  
18 similar personnel, fringe benefits, travel, it breaks down the  
19 cost as a year one, year two, year three, instead of a total  
20 cost. On this it says like Lee Gurfein, \$100,000 annual  
21 salary, percentage of time on project is estimated, the  
22 budgeted is estimated to be 75 percent, and so that should not  
23 be \$300,000, it should be it should be 225. Plus  
24 mathematically it's not right.

25 THE COURT: All right. Well, we have to take --

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8657KAR4

Riley - cross

1 THE WITNESS: But there is some other document.

2 THE COURT: You better study your documents, and we  
3 better take a luncheon break. It's ten after one, so the jury  
4 is excused until ten after two. And the parties are instructed  
5 they are not to talk to the witness during the break.

6 (Luncheon recess)

7 (Continued on next page)

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8657KAR4

Riley - cross

1

AFTERNOON SESSION

2

2:05 p.m.

3

(Jury not present)

4

MR. KWOK: Your Honor, may we just raise one quick

5

issue with the court --

6

THE COURT: Yes.

7

MR. KWOK: -- before we call in the jury? I believe

8

the witness just now was referring to some work papers or other

9

materials that she used to assist her in conducting her audit.

10

I believe she is referring to that box of documents there which

11

we just got on Monday. It looks like materials that she

12

gathered to assist her in her work. We haven't looked at it.

13

Defense hasn't looked at it. But if she is referring to and if

14

she wants to look at that to assist her, I was wondering if

15

anyone had any objection to give that to the witness.

16

MR. RUBINSTEIN: Judge, I suggested to Mr. Kwok that I

17

would have no problem if she reviewed it and showed us which

18

document she was going to rely upon. I don't want to have

19

another 2000 situation.

20

THE COURT: Do you want to recall her and have her

21

come back, have another witness? The jury is already inquiring

22

about where we are in this case, how many more witnesses, how

23

long.

24

MR. KWOK: We can take that out of order.

25

THE COURT: Well, both lawyers have to agree.

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Riley - cross

1           MR. KWOK: We have our next witness here who is Lee  
2 Gurfein. We can take him first, and in the meantime we can  
3 have the prior witness review the box of documents she was  
4 referring to.

5           MR. RUBINSTEIN: It sounds all right. I am just going  
6 to use the facilities for a second.

7           THE COURT: Let's call the jury in.

8           (Continued on next page)

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8657KAR4

Riley - cross

1 (Jury present)

2 THE COURT: Ladies and gentlemen, Ms. Riley wants to  
3 review her personal file in order to give you an answer to the  
4 question that was pending, so she is subject to recall for that  
5 question and continued cross-examination. In order to save  
6 time, we have another witness.

7 Will the clerk swear in the witness, please.

8 ELISHA GURFEIN,

9 called as a witness by the government,

10 having been duly sworn, testified as follows:

11 DEPUTY COURT CLERK: State your name, spell your first  
12 and your last name slowly for the record, please.

13 THE WITNESS: Elisha Gurfein, E-L-I-S-H-A. Last name  
14 G-U-R-F-E-I-N.

15 THE COURT: Please proceed, Mr. Everdell.

16 DIRECT EXAMINATION

17 BY MR. EVERDELL:

18 Q. Good afternoon, Mr. Gurfein.

19 A. Good afternoon.

20 Q. Where do you work?

21 A. I currently work at New York University and William  
22 Patterson University.

23 Q. What do you do at those universities?

24 A. I teach.

25 Q. What do you teach?

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8657KAR4

Gurfein - direct

1 A. I teach economics and finance at William Patterson, and I  
2 teach courses on natural resources at New York University.

3 Q. How long have you taught at those universities?

4 A. For a few years.

5 Q. What did you do before you were a teacher?

6 A. I had a company of my own in commodity trading.

7 Q. How long did you do commodities trading?

8 A. Oh, with my own company about 20 years and before that for  
9 ten.

10 Q. And before you were a commodities trader, what did you do?

11 A. I worked for the defense industry. I worked for a company.  
12 The name of the company was Furk & Elmer.

13 Q. What did you do for that company?

14 A. I was involved in getting -- pursuing government contracts  
15 for the company.

16 Q. How long did you do that for?

17 A. Ten years.

18 Q. What is your educational background?

19 A. I have a bachelor's degree in mathematics, and I have an  
20 MBA with a specialty in finance.

21 Q. And you mentioned government contracts. Could you explain  
22 that a little bit more.

23 A. Well, I was involved in trying to obtain government  
24 contracts for the company, but mostly the Defense Department  
25 and other agencies of the government.

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8657KAR4

Gurfein - direct

1 Q. Mr. Gurfein, did there come a time when you met a man named  
2 Daniel Karron?

3 A. Yes.

4 Q. Do you see Mr. Karron in the courtroom today?

5 A. Yes.

6 Q. Could you please point him out and describe an article of  
7 clothing.

8 A. He is sitting in the courtroom with a plaid shirt.

9 MR. EVERDELL: Let the record indicate that he has  
10 identified the defendant.

11 THE COURT: The record will so indicated.

12 Q. How did you first meet the defendant?

13 A. A mutual acquaintance some time back, probably in 2000  
14 roughly, I'm not sure.

15 Q. Was that the first time you met him?

16 A. Yes.

17 Q. Did there come another time when you met him?

18 A. Yes.

19 Q. When was that roughly?

20 A. In the spring or early summer of 2001.

21 Q. And what was the reason for that second meeting?

22 A. Dr. Karron told me that he was going to pursue a grant from  
23 the Department of Commerce and that he indicated to me that  
24 because I had background in government contracts and in  
25 business, he asked me to help him write that proposal.

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8657KAR4

Gurfein - direct

1 Q. And was he applying for the grant on behalf of himself or a  
2 company?

3 A. On behalf of a company.

4 Q. What company was that?

5 A. CASI.

6 Q. What's CASI stand for?

7 A. Computer Aided Surgery, Inc.

8 Q. And what was the defendant's position at CASI?

9 A. I believe he was the owner and president.

10 Q. What grant was he applying for?

11 A. He was applying for an ATP grant with NIST.

12 Q. Do you recall what NIST is?

13 A. The National Institute of Standards and Technology.

14 Q. And what was your understanding of why the defendant asked  
15 you to help with the grant writing proposal?

16 A. Because of my familiarity with government contracting and  
17 with writing proposals for government contracts.

18 Q. Did you and the defendant discuss whether you would have  
19 any continuing role -- oh, sorry.

20 Did you two discuss what your role with the company  
21 would be if you were to receive a grant?

22 A. Yes.

23 Q. What did you discuss?

24 A. I was to be the business manager in the event of an award.

25 Q. And what would the business manager do?

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8657KAR4

Gurfein - direct

1 A. Basically be responsible for all nontechnical issues.

2 Q. Would those include budgeting issues?

3 A. The purchasing of equipment, hiring of people, the  
4 budgeting, various other financial matters.

5 Q. Were you going to have any other role with CASI besides  
6 managing the grant funds?

7 A. Yes, I was to be attempting to obtain additional funds for  
8 CASI that would be supplemental to the funds coming from NIST.

9 Q. Additional funds?

10 A. Yes.

11 Q. And how much of your time was going to be spent on  
12 nonfundraising?

13 A. Well, 75 percent was to be for CASI directly on the grant,  
14 and 25 percent was to be for other fundraising, attempting to  
15 get more funds, which was part of the grants requirement, by  
16 the way.

17 Q. How long did the grant writing process take, the proposal  
18 writing process?

19 A. Several months. I can't remember exactly, but several  
20 months.

21 Q. During that time did you become familiar with the financial  
22 terms of the grant and what constituted proper and improper  
23 expenditures?

24 A. Yes.

25 Q. How did you do that?

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Gurfein - direct

1 A. Well, the package that we received from NIST spelled out  
2 the various requirements and the qualifications of the grant.

3 Q. Was that the proposer's package?

4 A. Yes, the proposer's package, correct.

5 Q. And did you review those materials during the time of the  
6 grant writing process?

7 A. Yes.

8 Q. And what did those materials say about allowable versus  
9 unallowable costs?

10 A. Well, it defined what was allowed and what would not be  
11 allowed in working on the grant.

12 Q. What sorts of things were those?

13 A. Well, it indicated that all direct costs would be allowed  
14 pretty much, but there were certain items that were not to be  
15 allowed like rent, utilities, accounting, legal, others I can't  
16 remember.

17 Q. Did you ever discuss these rules with Dr. Karron while you  
18 were preparing the proposal?

19 A. Yes.

20 Q. How many times would you discuss these spending rules?

21 A. At various times, numerous times, but at various times  
22 under different conditions or whatever particular item we were  
23 discussing.

24 Q. Did you discuss any particular costs with the defendant  
25 during that period?

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8657KAR4

Gurfein - direct

1 A. Yes. We discussed at the time of the writing the proposal  
2 the writing costs, the various costs associated with that.

3 Q. Can you be more specific?

4 A. Well, I mean there were various costs that we had. In  
5 particular, there were costs for travel to Gaithersburg where  
6 NIST was located, there were some host travel costs, there were  
7 motels whatever, food, whatever we expended that way, which  
8 actually at the time I was laying out that money. And Dr.  
9 Karron and I discussed that.

10 Q. You had some discussions about those costs?

11 A. Yeah.

12 Q. What was the nature of those discussions?

13 A. Dr. Karron said we will try and see if we can get those  
14 things paid, and you will get your money back and so forth.

15 Q. What if anything did you say to him?

16 A. I said, you know, they're not allowable, those costs are  
17 not allowable, so, you know, let's not worry about it. Because  
18 there wasn't that much money to begin with, but  
19 notwithstanding, they weren't allowed.

20 Q. All right. Mr. Gurfein, did CASI eventually receive an ATP  
21 grant.

22 A. Yes.

23 Q. And how much money was authorized?

24 A. My memory says \$2.1 million, but I could be off by a little  
25 bit.

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8657KAR4

Gurfein - direct

1 Q. And how was that money going to be disbursed?

2 A. In progress payments over a three-year period.

3 Q. Did you in fact have any continuing involvement with CASI  
4 after the grant was awarded?

5 A. Yes.

6 Q. What was that involvement?

7 A. I was taken on as the business manager.

8 Q. How long were you the business manager?

9 A. For one year.

10 Q. Starting when and ending when?

11 A. Starting October 1, 2001, ending September 30, 2002.

12 Q. Were you paid anything for this job?

13 A. Yes.

14 Q. How much were you paid?

15 A. I was paid \$100,000.

16 Q. Mr. Gurfein, did there come a time when you met with people  
17 at NIST after the grant was awarded to discuss the grant?

18 A. Yes.

19 Q. About when was that?

20 A. Approximately a month or so after the award.

21 Q. When was the award?

22 A. The award was effective October 1, 2001. We were advised  
23 of it on October 4, 2001.

24 THE COURT: For the \$100,000, was that a full-time  
25 job?

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8657KAR4

Gurfein - direct

1 THE WITNESS: The \$100,000 was for 75 percent of my  
2 time.

3 THE COURT: So, you spent 75 percent on businesses  
4 other than CASI, is that correct? I mean 25 percent --

5 THE WITNESS: Yes.

6 THE COURT: -- on businesses of yours other than CASI.

7 THE WITNESS: Yes, sir. But the 25 percent was also  
8 on CASI's behalf --

9 THE COURT: Yes.

10 THE WITNESS: -- in pursuing other funds.

11 THE COURT: I see. All right. Sorry, Mr. Everdell.

12 MR. EVERDELL: That's all right, your Honor.

13 Q. So, you mentioned the meeting you had with the NIST people  
14 after the grant was awarded.

15 A. Sorry?

16 Q. You mentioned a meeting you had with NIST people after the  
17 grant was awarded.

18 A. Yes.

19 Q. About when did that take place again?

20 A. About a month or so, maybe a little more than a month after  
21 the award.

22 Q. Did that meeting have a name in particular?

23 A. That was referred to as a kick-off meeting.

24 Q. What was the kick-off meeting?

25 A. Well, it was a meeting to essentially restate the rules,

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8657KAR4

Gurfein - direct

1 the ground rules, what was expected of us, what that agency was  
2 all about, namely the NIST agency, what the reporting of the  
3 funding would be, what the reporting of progress would be, what  
4 was allowed, what was not allowed, under what conditions would  
5 we have to apply for a change to the budget that was approved.

6 Q. And who attended this meeting from CASI?

7 A. Dr. Karron and I attended that meeting.

8 Q. And who attended from NIST?

9 A. Well, Hope Snowden, who was the grant administrator  
10 attended, as did Jayne Orthwein and B.J. Lide, and there might  
11 have been some other people. I think maybe Marilyn Goldstein,  
12 and I think even the director might have popped in for a little  
13 bit, Mark Stanley. I remember shaking his hand. That's all I  
14 remember.

15 Q. Those other people that you mentioned -- Hope Snowden,  
16 Jayne Orthwein, B.J. Lide -- who are they?

17 A. Hope Snowden was a grant administrator.

18 Q. Was she on this particular grant with CASI?

19 A. Yes, yes. B.J. and Jayne were supervisory management type  
20 persons who were more involved in the technical aspects, as  
21 well as the business but in the overall aspects of the grant.

22 Q. And what happened at the kick-off meeting?

23 A. How do you mean?

24 Q. Did the people at NIST have any discussions with you at  
25 that meeting?

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8657KAR4

Gurfein - direct

- 1 A. Yes, they told us what they expected of us.
- 2 Q. And how did they impart that information to you?
- 3 A. There was a presentation made to us.
- 4 Q. I want you to take a look at what's already in evidence as
- 5 Government Exhibit 4, which in the folder in front of you, one
- 6 of those two folders.
- 7 A. Yeah.
- 8 Q. Display the first page.
- 9 A. I see it.
- 10 Q. Do you recognize what that is?
- 11 A. Yes.
- 12 Q. What is that?
- 13 A. That was part of the presentation made to us at the
- 14 kick-off meeting.
- 15 Q. What did that presentation involve?
- 16 A. That presentation involved a statement of what the ATP
- 17 program was and what our responsibilities would be in reporting
- 18 and so forth.
- 19 Q. What if anything were you told about the responsibilities
- 20 concerning the budget?
- 21 A. With respect to the budget?
- 22 Q. Yes.
- 23 A. Well, one of the things we talked about was if we were more
- 24 than a certain percentage from the budgeted numbers, then we
- 25 had to apply for permission to do that.

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865ZKAR5

Gurfein - direct

1 BY MR. EVERDELL:

2 Q. And how did that permission come?

3 A. That would be in writing.

4 Q. What, if anything, were you told about spending outside the  
5 budget?

6 A. That it could be allowed, but it would have to be approved.

7 Q. What about direct versus indirect costs, were you told  
8 anything about that?

9 A. Right. I mean we were able pretty much to spend on  
10 indirect -- I'm sorry -- on direct costs in a most general way,  
11 but indirect costs were generally not allowed.

12 Q. What were those things covered at this meeting?

13 A. Well, again, the rent, the utilities, accounting, legal,  
14 maybe some other items. I can't recall.

15 Q. Now, around the time when the grant was awarded and the  
16 kickoff meeting occurred, did you have any discussions with Dr.  
17 Karron about any particular expenditures?

18 A. Well, again leading up to the award, we had discussed  
19 various of those items that were not allowed. Again, we  
20 discussed the proposal writing costs.

21 Q. What exactly did you discuss about?

22 A. Well, whether they would be allowed and -- you know, it was  
23 I thought pretty clear that we weren't allowed, but he said  
24 maybe we'll get them allowed. But I'm not sure how that was  
25 going to happen.

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865ZKAR5

Gurfein - direct

1 Q. To your knowledge, were any of those preproposal costs ever  
2 approved by NIST people?

3 A. Not to my knowledge.

4 Q. What other specific expenditures did you discuss with the  
5 defendant around this time when the grant was awarded?

6 A. Well, after the award, we discussed rent and utilities and  
7 legal and accounting.

8 Q. Let's talk about rents and utilities for a moment. What  
9 was the nature of your discussions about rent and utilities?

10 A. Well, we had, in the proposal, and as approved in the  
11 grant, we had indicated that we were going to be involved with  
12 the City University at Fifth Avenue and 34th Street with the  
13 graduate center there, the computer science part of it, where  
14 we would have a facility there, and that facility would be a  
15 company with some support staff from graduate students or  
16 whatever, who were in the computer science area.

17 Q. What happened with respect to that facility?

18 A. Well, it was decided that we would not be using that  
19 facility.

20 Q. Why not?

21 A. I think Dr. Karron had indicated that the overhead rates  
22 for the people there was high, and that it was something that  
23 would not be desirable.

24 Q. So where did CASI set up its business location?

25 A. We set up, basically, in Dr. Karron's apartment.

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865ZKAR5

Gurfein - direct

1 Q. And what, if any, discussions did you have with the  
2 defendant about rent and utilities with respect to the business  
3 space of CASI?

4 A. Well, yeah, he felt that -- I mean, he indicated to me that  
5 the rent should be paid to him by CASI, because that's where we  
6 were doing all the work, and it was essentially an office  
7 laboratory situation.

8 Q. This was rent from CASI to the defendant?

9 A. From CASI to the defendant, yes.

10 Q. And when the defendant told you this, what, if anything,  
11 was your reaction?

12 A. Well, it was clear that the rules, or the guidelines given  
13 to us by the people at NIST said no, that's -- that was not  
14 allowed.

15 Q. And what, if anything, did the defendant respond?

16 A. Well, he asked me to see if we can get it approved. So I  
17 wound up calling Hope Snowden at NIST and asking her if it  
18 could be approved.

19 Q. What, if anything, was her response?

20 A. She said no.

21 Q. And what did you do after you heard no from Hope Snowden?

22 A. I reported to Dr. Karron. And he said, well, we talked  
23 about it and he said, well, why don't you go back and try  
24 again. But under the idea that this is a one grant company,  
25 and so it's clear that everything we do here is for this grant

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865ZKAR5

Gurfein - direct

1 and there were no other funds, and so that there's no other  
2 activity at the moment. So that we could simply -- you know,  
3 it would be, as he expressed it, appropriate for us to get paid  
4 rent for that facility.

5 Q. And did you, in fact, call Hope Snowden again?

6 A. Yes, I did.

7 Q. And did you ask her that question?

8 A. Yes, I did.

9 Q. That way?

10 A. With regard, with regard to it being a one grant operation,  
11 yes.

12 Q. And what was her response?

13 A. She said no, we can't -- we don't approve that.

14 Q. And what, if anything, did you do with that response?

15 A. I told it to Dr. Karron.

16 Q. And what was his response?

17 A. I don't know. I think he was a little none plused by it, I  
18 don't know exactly. For that moment we dropped it at the  
19 moment at that point.

20 Q. About how many times did you speak to Hope Snowden about  
21 this issue of rent?

22 A. Well, certainly twice, maybe more, but certainly twice.

23 Q. And did you -- did Hope Snowden ever tell you that rent was  
24 an allowable expense?

25 A. No.

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865ZKAR5

Gurfein - direct

1 Q. Did you have any other discussions with Hope Snowden about  
2 other expense?

3 A. Yes. We discussed other expenses. I think I probably  
4 discussed the proposal costs expense and utilities. I think we  
5 discussed again similar to the rent discussion.

6 THE COURT: Did you ever talk to anyone besides Hope  
7 Snowden about these this rent and utilities?

8 THE WITNESS: It's possible. I might've discussed --  
9 I might have called her supervisor, Marilyn Goldstein, on a few  
10 occasions.

11 THE COURT: And did you get a -- what answer did you  
12 get?

13 THE WITNESS: Essentially, no.

14 THE COURT: All right.

15 Q. And about how often did you call Hope Snowden and these  
16 other people you mentioned?

17 A. Well, at the beginning of the grant period that I was  
18 there, I would call her two times a week or so. As time went  
19 on, I called her maybe two times a month.

20 Q. All right. Mr. Gerfein, do you know, approximately, when  
21 CASI received its first installment of ATP grant money?

22 A. I've been trying to figure that out. But I know it was  
23 very early. It was not very much after the notice of award.  
24 The notice of award was October 4th. I keep thinking it was  
25 right after that, but I'm not sure.

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Gurfein - direct

1 Q. Do you recall how much was transferred into the CASI bank  
2 account?

3 A. Yes. \$150,000.

4 Q. And where did that money go?

5 A. That money went into a CASI general account of some kind.

6 Q. Did you --

7 A. At Chase Bank.

8 Q. I'm sorry?

9 A. It was at Chase Bank, I recall that.

10 Q. Did you ever have any discussions with the defendant about  
11 that initial transfer of \$150,000?

12 A. Yes. He, he -- we had applied for, I believe, or we had to  
13 apply for it, and I think with happiness he told me one morning  
14 when I arrived at his apartment that the money came in, the  
15 150,000 came in. And in the same sentence I recall he said,  
16 and I've transferred \$75,000 out of the account.

17 Q. Did he say why he did that?

18 A. Yes. He said he had some personal obligations to his  
19 family, money owed to his family, and he said that he had  
20 credit card payments to make.

21 Q. With respect to his obligations to his family that you  
22 mentioned, did you ever have any other discussions with him  
23 about that topic?

24 A. Well, I mean in the course of writing the proposal, he had  
25 allowed that he had not had a -- been employed in any way, nor

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Gurfein - direct

1 had any other grant money for sometime, and so that he had to  
2 resort to credit cards and to family help.

3 Q. And what in particular did you -- did he say what he was  
4 spending the credit card money on?

5 A. Well, my sense was that from what the discussions were was  
6 that he was spending it on just living. He said he had to  
7 live, and so he used his credit cards to live.

8 Q. When you heard from the defendant that he had transferred  
9 \$75,000 out of the \$150,000, what, if anything, did you say?

10 A. I told him he couldn't do that.

11 Q. And what was the defendant's response?

12 A. He said, I have to do it.

13 Q. Did he expand on that?

14 A. Well, he said he had no choice; he had to get rid of those  
15 debts he had and he was taking those funds at the get --  
16 initially, he had to just take those funds immediately.

17 Q. Did you have any other discussions with the defendant about  
18 where the grant money was being deposited?

19 A. Yes.

20 Q. What were those discussions?

21 A. Well, I told him that we had to open up a separate account  
22 for the grant so that we don't have it mixed up with any other  
23 activities of CASI, if there were any.

24 Q. And what was the defendant's response to that?

25 A. Well, at first he rejected the idea, I think saying that it

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Gurfein - direct

1 was -- it would just cost too much to open up another account.  
2 But I didn't -- I didn't understand what that meant about the  
3 cost would be so great. But I told him it was a requirement of  
4 the grant that we had to have a separate account.

5 Q. And was a separate account eventually opened?

6 A. Yes.

7 Q. Mr. Gerfein, when you accepted the job at CASI as business  
8 manager, what was your understanding about who would have the  
9 authority to sign checks for the company?

10 A. Our initial discussions were that I was going to have sole  
11 responsibility for signing checks. I told him that, look,  
12 that's okay, but this is your company and really there should  
13 be dual signature requirement for most checks. And we agreed  
14 that there would be dual signature responsibility, but anything  
15 under \$250 could be signed by one person.

16 Q. Is this in fact that arrangement you just described, is  
17 that in fact what happened after the grant was awarded?

18 A. No.

19 Q. How did it work in practice after the grant was awarded?

20 A. Within one week exactly on October 11th, Dr. Karron sent a  
21 note to Hope Snowden saying that, while I had administrative  
22 responsibility, I had no signature or officer responsibility at  
23 CASI.

24 Q. And what did you understand that to mean?

25 A. That means that I was stripped of my ability to control the

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Gurfein - direct

1 business as I was told I would have.

2 Q. Take a look at Government's exhibit 21 in the other folder  
3 in front of you. Could we display that on the screen, page  
4 three. It's also in the jury binders.

5 A. Uh-huh. Yes.

6 Q. You see that document?

7 THE COURT: It's a little hard to see, but can you  
8 read it?

9 THE WITNESS: Yes.

10 THE COURT: I can't, I can't read it.

11 THE WITNESS: Here's my copy.

12 THE DEPUTY CLERK: Judge, he has a copy.

13 THE COURT: All right. He was looking up there, so I  
14 was --

15 Q. Actually, he, if you could blowup exactly what you blew up.

16 Mr. Gerfein, do you see that document?

17 A. Yes.

18 Q. What is that document?

19 A. That document is the letter that Dr. Karron sent to Hope  
20 Snowden dated October 11th, 2001 and indicating that I only had  
21 the administrator responsibility, but not the signature  
22 authority. And it says here, and is not authorized to sign for  
23 the corporation.

24 Q. Where do you see that?

25 A. From the third -- on the right side, third line from the

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Gurfein - direct

1 bottom.

2 Q. And you see the final sentence which says, the  
3 authorization for Mr. Gerfein to commit the corporation will be  
4 made by separate letter authorization if the need arises?

5 A. Correct. I see that.

6 Q. Were you ever given signatory authority for the company  
7 while you were working at CASI?

8 A. No.

9 Q. And what's the date on this letter?

10 A. I'm sorry?

11 Q. What's the date on this letter?

12 A. The date on the letter above, October 11th -- right there,  
13 yeah.

14 Q. And about how long after the grant was awarded was that  
15 letter dated?

16 A. It's dated -- well the grant was -- notification of award  
17 was October 4th, and this letter is dated October 11th. So  
18 it's exactly one week after the notice of award.

19 Q. All right. Mr. Gerfein, did you have any further  
20 discussions with the defendant about spending grant money after  
21 that letter was submitted?

22 A. About spending grant money?

23 Q. About particular expenditures?

24 A. Sure, I mean we discussed various things that -- I mean Dr.  
25 Karron kind of liked equipment. I mean he --

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Gurfein - direct

1 Q. Why did you discuss the equipment discussions you had?

2 A. In particular, we discussed -- there were many items of  
3 discussion, but we discussed some monitors that he bought that  
4 were very expensive. I mean as monitors go, I think these  
5 were, if I remember correctly, a couple thousand dollars a  
6 piece. They were large, attractive, but I didn't think they  
7 were necessary, and they were not part --

8 MR. RUBINSTEIN: Objection, move to strike.

9 A. They were not part of the grant.

10 MR. RUBINSTEIN: I move to strike what he thought.

11 THE WITNESS: I'm sorry.

12 THE COURT: Objection sustained, I guess.

13 Q. Are you --

14 THE COURT: As to what he thought. You said you  
15 thought that you told him they were not part of the grant.

16 THE WITNESS: Yes, sir.

17 THE COURT: Go ahead, what. Did you tell him anything  
18 else?

19 Q. I'm sorry, Mr. Gerfein, you mentioned monitors in  
20 particular?

21 A. Right.

22 Q. Is there any other pieces of equipment?

23 A. They were not part of the grant. Also, the point they were  
24 not part of approved grant.

25 Q. All right, let's -- what, if any, discussions did you have

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Gurfein - direct

1 with defendant about these pieces of equipment not being part  
2 of the grant?

3 A. Well, that, you know, he couldn't just buy anything he  
4 wanted; that he had to do things that were part of the grant.  
5 If he wanted to get something that was not part of the grant,  
6 he would have to apply for a written approval. And his  
7 response to me was I'm the PI, meaning I'm the principal  
8 investigator, and I can do anything I want. I said, you can't  
9 do anything you want. And that went on and on. That, that  
10 interchange took place a number of times.

11 Q. Did you approve or disapprove yourself of these  
12 expenditures?

13 MR. RUBINSTEIN: Objection, your Honor.

14 THE COURT: Objection sustained. As I understood it,  
15 his testimony is that he didn't have approval authority after  
16 October 11th.

17 MR. EVERDELL: I'm sorry, your Honor, I just meant not  
18 with respect to your approval, signatory authority, but did you  
19 think that these expenditures --

20 THE COURT: The question is whether they came within  
21 the grant or not, not whether he personally approved things.  
22 This isn't a trial in connection with --

23 MR. EVERDELL: Certainly, your Honor.

24 THE COURT: -- personal approvals or disapprovals.

25 Q. When you said that these were not part of the grant, these

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Gurfein - direct

1 expenditures that you were talking to the defendant about, what  
2 did you mean by that?

3 A. Well, we had included in our proposal various figures,  
4 including figures for equipment, and the equipment was  
5 delineated, and the items that we just talked about were not  
6 included. And when those items were being purchased that were  
7 not required by the grant, or not approved by the grant, I  
8 should say, then they really should not have been bought.

9 Q. Did you discuss this with the defendant?

10 A. Yes, but --

11 Q. What was his response?

12 A. Well, first of all, it was always after the fact that I  
13 found out that these things were bought, because I didn't have  
14 anyway of stopping it. And so I'd come in there one day as an  
15 example, and there would be this movie sized theater -- these  
16 theater size movie screen going up, projection screen probably  
17 as big as that, maybe bigger, don't know. And I said to him,  
18 what is that all about? And he said, well, we need that. And  
19 I said, for what? And I just didn't understand why we'd have  
20 to spend another few thousand dollars when we --

21 MR. RUBINSTEIN: Objection to what -- his feelings.

22 THE COURT: The jury is instructed to disregard the  
23 last three or four words. What the issue is that, was that  
24 amongst the equipment that was delineated in the grant?

25 THE WITNESS: It is not. That equipment was not

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Gurfein - direct

1 included in the grant.

2 Q. What was the defendant's response when you would talk to  
3 him about these non-delineated equipment pieces?

4 A. He said, we needed it.

5 Q. Do you know what funds were used to buy these items,  
6 equipment?

7 A. The only funds we had were funds from NIST, ATP funds. So  
8 there were no other funds that I knew about that came into the  
9 company.

10 Q. How do you know the only funds you had were ATP funds?

11 A. Well, because I had been trying to get other funds and I  
12 had not been successful in doing that.

13 THE COURT: Did you review -- were you in charge of  
14 the books and records?

15 THE WITNESS: Essentially not. I mean, I should have  
16 been, but I had no control over it.

17 THE COURT: What about the bank account?

18 THE WITNESS: Same.

19 THE COURT: You didn't --

20 THE WITNESS: I had no control over it.

21 THE COURT: You didn't review the bank accounts?

22 THE WITNESS: I did, but I had no control over it.

23 Q. Did you have any discussions with the defendant on the  
24 subject of fringe benefits for medical expenses?

25 A. Yes.

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Gurfein - direct

1 Q. And what were the nature of those discussions?

2 A. The nature of those discussions were that the, the figure  
3 of 34 percent of an employee's gross salary was allowable for  
4 medical and other expenses like that, fringe benefits. And Dr.  
5 Karron was of the opinion that, because he told me so, that if  
6 it was 34 percent of the total payroll, that would be okay.

7 Q. What do you mean, if it was 34 percent of the total?

8 A. If we did not exceed 34 percent of the entire payroll as  
9 opposed to just 34 percent of each individual, that would be  
10 okay. So that if one person had, say, 20 percent and one  
11 person had 50 percent, the average would be like 35 percent or  
12 something close to that, so that would be okay.

13 THE COURT: Did the company have a benefit plan? Did  
14 the company have a benefit plan?

15 THE WITNESS: Not that I ever saw.

16 THE COURT: And how were fringe benefits administered?

17 THE WITNESS: They were very loosely arranged at that  
18 time.

19 THE COURT: What do you mean by that?

20 THE WITNESS: Well, there was, there was an assignment  
21 given to an attorney to generate a benefit policy, but that  
22 never happened while I was there.

23 THE COURT: But how -- you said they were loosely  
24 administered. Someone had to document something like that.

25 THE WITNESS: Right.

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Gurfein - direct

1 THE COURT: What would happen?

2 THE WITNESS: Doctor's bill, if the person would have  
3 insurance or the bill would be submitted, but basically the  
4 company paid for insurance in my case.

5 THE COURT: Was there insurance; there was health  
6 insurance?

7 THE WITNESS: There was no -- to my knowledge, there  
8 might have been a policy, but I can't recall. I do know that  
9 in my case it was handled a little bit differently, but still  
10 it was, there was no formal policy.

11 THE COURT: What did they do, pay them as the bills  
12 came in?

13 THE WITNESS: I was covered by -- I was covered by an  
14 insurance policy. I think Dr. Karron had one too. But I think  
15 there were other bills that he might have had, as I recall,  
16 that were paid possibly directly. I really don't know.

17 THE COURT: So that's what you mean by "loosely"  
18 administered.

19 THE WITNESS: Yes.

20 THE COURT: I see.

21 BY MR. EVERDELL:

22 Q. Mr. Gerfein, did the defendant have any health expenditures  
23 that you're aware about during this period you worked with  
24 CASI?

25 A. Yes, he had -- I think he had a lot of health expenditures.

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Gurfein - direct

1 In particular, I remember he had dental expenditures.

2 Q. How do you know he had dental expenditures?

3 A. Well, often times he asked me to pick him up at the dentist  
4 on my way into the office.

5 Q. And do you know what kind of dental procedures he was  
6 having?

7 A. In particular, he had indicated that he had a jaw  
8 reconstruction activity going on with the dentist.

9 Q. And did you have any sense about why the defendant was  
10 having his jaw --

11 A. Based on his discussion with me, and some other people who  
12 had such procedure, and that they were getting a sex change  
13 operation, it became clear that that jaw reconstruction was for  
14 a sex change operation.

15 Q. And just to repeat, did you see any written plan for the  
16 employees at CASI for health benefits?

17 THE COURT: Wait. I don't understand. A dentist  
18 can't -- doesn't do a sex change operation.

19 THE WITNESS: Correct; yes, sir.

20 THE COURT: You picked him up at the dentist.

21 THE WITNESS: Right, but --

22 THE COURT: So all you know is that he had dental  
23 expenses.

24 THE WITNESS: Right. But based on his descriptions he  
25 made of some other people who he knew who had a similar

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Gurfein - direct

1 procedure, and that was as the cosmetics for in contemplation  
2 of a sex change operation.

3 Q. All right. Mr. Gerfein, did you ever see a written plan in  
4 place for CASI for health expenditures?

5 A. I did not.

6 Q. Mr. Gerfein, when you had discussions with the defendant  
7 about spending, where would you have those conversations?

8 A. Well, typically we would leave the office, which was  
9 usually very noisy and poorly ventilated, and we'd go to a  
10 coffee shop, one of several coffee shops across the street.

11 Q. And when you had meetings with the defendant, would you  
12 schedule meetings or would you just show up?

13 A. Well, both. Sometimes I just show up and sometimes they  
14 were scheduled.

15 Q. When you did schedule meetings, did the defendant always  
16 attend your scheduled meetings?

17 A. Very often not.

18 Q. Can you expand on that?

19 A. Well, I would try to see him on various occasions having to  
20 do with budgetary things and other matters, and sometimes I'd  
21 show up at the appointed time, let's say 11:00 o'clock and he  
22 was either sleeping or he's in the gym or whatever, but very  
23 often he was not there.

24 Q. You say he was sleeping; how do you know he's sleeping?

25 THE COURT: I don't see the relevance of whether he's

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Gurfein - direct

1 sleeping or not, Mr. Everdell. You have to --

2 Q. As a --

3 MR. EVERDELL: Your Honor, if we could have a brief  
4 sidebar?

5 THE COURT: If you got -- all right, go ahead then.

6 MR. EVERDELL: All right.

7 THE COURT: You got a relevant point, but I just  
8 wanted to call your attention to the possible lack of  
9 relevance.

10 Q. How, if anything, did this, did these -- did the  
11 defendant's work habits impact your work?

12 MR. RUBINSTEIN: Objection, your Honor.

13 THE WITNESS: Very often it was difficult to --

14 MR. RUBINSTEIN: I have an objection.

15 THE COURT: I will allow the question.

16 Q. How, if any --

17 A. Well, very often I would try to meet with him and -- well,  
18 one time I had an appointment to see him on a Sunday evening  
19 'cause I could get his attention without interference, and I'd  
20 show up and I wait for an hour, and he didn't show up.

21 Q. Do you ever have any discussions with Dr. Karron about his  
22 work habits?

23 A. Yes, I did. I told him this is not just acceptable. I  
24 used to get frustrated just showing up time and time again, and  
25 he'd be out doing what he was doing.

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Gurfein - direct

1 Q. Mr. Gerfein do you know someone named Margaret Ferrand?

2 A. I know the name Margaret.

3 Q. Who is Margaret?

4 A. Margaret was a cleaning lady.

5 Q. And what did you -- oh, did you ever see her in the  
6 apartment, Margaret?

7 A. Sure.

8 Q. How often?

9 A. I would guess once a week, but I'm not really sure.

10 Q. And what was she doing when you saw her in the apartment?

11 A. She'd be cleaning dishes or toilets or, you know, whatever;  
12 dusting, whatever a cleaning lady does.

13 Q. Did you ever see Margaret doing any office work, aside from  
14 cleaning, while you were there?

15 A. Not when I was there.

16 MR. EVERDELL: One moment, your Honor.

17 Q. Mr. Gerfein, when did you terminate your employment at  
18 CASI?

19 A. I terminated my employment September 30th, 2002.

20 Q. Why did you leave after only one year?

21 A. Well, Dr. Karron said he couldn't afford to pay me the  
22 hundred thousand dollars a year. And he asked if I would stay  
23 on at \$50,000 a year. And it didn't take much time for me to  
24 know that I wouldn't stay there either way, at 100 or 50,  
25 because my mental health was more valuable than being part of

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Gurfein - direct

1 that operation.

2 MR. EVERDELL: Thank you. No further questions.

3 THE COURT: Mr. Rubinstein.

4 MR. RUBINSTEIN: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. RUBINSTEIN:

7 Q. In fact, Mr. Gurfein, you had a contract, did you not?

8 A. I did.

9 Q. And your contract was for one year, correct?

10 A. Correct.

11 Q. And at the end of the year were you offered a renewal of  
12 that contract?

13 A. No.

14 Q. You were a member of the board of directors, were you not?

15 A. For one month.

16 Q. And --

17 A. Approximately.

18 Q. Was that the first month?

19 A. That was -- no. It was sometime between July and August,  
20 something like that.

21 Q. July and August of 2002?

22 A. Correct.

23 Q. And were you an officer in the corporation?

24 A. For about that one month. I was made an officer of the  
25 corporation without my being told in advance, and I resigned

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Gurfein - cross

1 that within a month, roughly, of the time that I had that,  
2 while I that maintained my position as the business manager.

3 Q. You resigned as member of the board, correct?

4 A. Yes.

5 Q. Who else was on the board?

6 A. Dr. Karron, I think there was a Mr. Bernstein I believe who  
7 was an attorney, there was Abe Karron, who was Dr. Karron's  
8 brother. There were, there probably was one other person, I  
9 think possibly Frederica Miller attorney. I'm not sure. She  
10 might have been a member of the board as well.

11 Q. And these -- did you attend any board meetings?

12 A. That one. Oh, as a director or as a visitor?

13 Q. At any time?

14 A. I think I attended two board meetings in total, if I  
15 remember correctly.

16 Q. And where were the board meetings held?

17 A. They were held at the office of Mr. Bernstein.

18 Q. And what time of day or night?

19 A. I think probably in the evening.

20 Q. And you, when you worked at CASI, what were your work  
21 hours?

22 A. The work hours were pretty variable. They were up to me.  
23 And some days I worked at CASI's offices like three days a  
24 week, maybe four, maybe two, and the rest of the time I worked  
25 at home. But remember I was there on 75 percent of the time.

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Gurfein - cross

1 Q. When you came to the office, how late would you stay on a  
2 non-board member day?

3 A. It varied.

4 Q. Well, what was the latest that you ever stayed at the  
5 office when you were the -- you were the chief operating  
6 officer?

7 A. No, I was not.

8 Q. What was your title?

9 A. Business manager, I think.

10 Q. How late did you -- what's the latest you ever worked at  
11 CASI the year as the business manager?

12 A. Probably midnight.

13 Q. And how often did you do that?

14 A. I don't remember.

15 Q. More than once?

16 A. Oh, sure.

17 Q. And you were asked to invest money in CASI, were you not?

18 A. I was.

19 Q. You were asked to invest money by Dr. Karron's brother, Abe  
20 Karron, right?

21 A. It wasn't quite like you're saying.

22 Q. Well, were you asked to invest \$50,000?

23 A. That's correct.

24 Q. And when you were asked to invest, when was it?

25 THE COURT: Could we have a date, Mr. Rubinstein?

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Gurfein - cross

- 1 Q. Was that early on --
- 2 A. Yes.
- 3 Q. -- your employment, correct?
- 4 A. Correct.
- 5 Q. It was prior to the time that the letter was generated to
- 6 Marilyn Goldstein limiting your functions?
- 7 A. No, it was after that.
- 8 Q. When was it?
- 9 A. I don't know the date, but it was after that.
- 10 Q. Were you a signatory at one time on the checking accounts?
- 11 A. Was I a signatory on the checking account? Did I sign
- 12 paper, documents at Chase to do that at some point? I think I
- 13 did. Did I ever sign a check? No.
- 14 Q. How were the checks created?
- 15 A. How were they created?
- 16 Q. Yeah. You got paid, didn't you?
- 17 A. Yes.
- 18 Q. Paid every week, correct?
- 19 A. No.
- 20 Q. Got paid every two weeks?
- 21 A. No.
- 22 Q. How often you get paid?
- 23 A. Once a month.
- 24 Q. Each month?
- 25 A. Each month.

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Gurfein - cross

1 Q. Now, you told us about Dr. Karron in the first month of the  
2 grant he took \$75,000 for as a loan for his personal use,  
3 correct?

4 A. Correct.

5 Q. Now, he was earning \$175,000 for the year, correct?

6 A. Correct.

7 Q. And that comes out to about \$14,000 and change a month?

8 A. Correct.

9 Q. Did you know if Dr. Karron took a check, a paycheck in  
10 November of 2001?

11 A. I don't know.

12 Q. Do you know if he took a paycheck in December of 2001?

13 A. I don't know.

14 Q. Do you know if he got a paycheck in January of 2002?

15 A. I don't remember that.

16 Q. Isn't it a fact that the first paycheck that Dr. Karron got  
17 was in May of 2002?

18 A. I don't know that.

19 Q. Well, as the --

20 THE COURT: The jury is to draw no inferences.

21 Questions only are what is the evidence before you. Don't draw  
22 any inferences from the question.

23 Q. Now, there were a number of people who worked at CASI on  
24 this project, were there not?

25 A. Several, yes.

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Gurfein - cross

1 Q. And what was the original budget for salaries?

2 A. For what?

3 Q. For salaries, for total salaries?

4 A. I don't remember. I don't recall that offhand.

5 Q. Let me show you an exhibit to see if it refreshes your  
6 recollection?

7 THE COURT: What exhibit?

8 Q. Okay. After the initial budget was submitted, was there an  
9 amendment, a request for an amendment to the budget submitted?

10 A. I'm sorry, could you repeat that?

11 Q. Yeah. After the initial budget was submitted, you  
12 submitted a budget before you received the funds, correct?

13 A. Yes.

14 Q. And that was to get \$800,000 the first year, correct?

15 A. Correct.

16 Q. And after --

17 THE COURT: Total budget.

18 Q. For the first year?

19 A. I believe, I believe 800,000 sounds about right. It might  
20 have been a little bit more.

21 THE COURT: Budget. We're not talking salaries at  
22 this point. Budget.

23 MR. RUBINSTEIN: No, talking total budget.

24 A. Yes.

25 Q. The first year. And then the total you told us was for the

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865ZKAR5

Gurfein - cross

1 three years was about 2.1 million?

2 A. Correct.

3 Q. Now, in October did you file for a budget amendment, a  
4 revision early on?

5 A. Yes.

6 Q. And I turn your attention to exhibit -- do you have the  
7 exhibits in front of you, sir? Is there a book with exhibits  
8 there?

9 A. Which exhibit are you --

10 Q. I'm referring to exhibit 22.

11 A. I don't have such an exhibit.

12 MR. EVERDELL: One moment, your Honor.

13 MR. RUBINSTEIN: I'll give him my exhibit, your Honor.

14 MR. EVERDELL: Here.

15 Q. Mr. Gerfein --

16 THE COURT: The witness has been handed exhibit 22.

17 Q. Did you review that, sir?

18 A. Which piece of paper are you asking me to look at?

19 Q. The entire exhibit.

20 A. Okay. I, I have an idea what this is.

21 Q. Did you have discussions with people, either Hope Snowden  
22 or anybody at ATP about a revision in the budget?

23 A. About a provision in the budget?

24 Q. No, a revision?

25 A. Oh, yes. The chances are I did, although this was

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Gurfein - cross

1 submitted -- we did make a submission.

2 Q. And did you prepare the submission?

3 A. I believe I did. I can't be 100 percent sure. But if I  
4 did it, I did it with the Dr. Karron. I mean, we certainly  
5 discussed it.

6 Q. All right. And by looking at that document, does it  
7 refresh your recollection as to what the budget was for the  
8 first year?

9 A. Right. I see that.

10 Q. And there were submitted reasons for the request for  
11 revisions, correct?

12 A. Yes.

13 Q. As a matter of fact, this was the second revision for  
14 budget?

15 A. I don't recall that. I, I just don't recall which revision  
16 it was, if there was a first or second.

17 Q. Do you recall submitting a revision to change your name  
18 from Lee to Elisha?

19 A. If there was such changes, I do not remember it.

20 Q. Now, the salary -- did you understand, sir, as the business  
21 manager, that you did not need approval if you changed a  
22 category by 10 percent?

23 A. Within 10 percent.

24 Q. Of the grant?

25 A. Yes.

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Gurfein - cross

1 Q. So that you could add \$80,000 to a category as long as you  
2 took 80,000 away from that category, correct?

3 A. Um, that could be correct. I can't be sure 100 percent if  
4 that's correct.

5 Q. Now, you told us that you had health insurance. You  
6 actually had a contract, correct?

7 A. Yes.

8 Q. And did that provide for health benefits for you?

9 A. I think so, but I can't remember exactly. I don't have it  
10 in front of me.

11 Q. Do you recall who the lawyer was who you mentioned was  
12 contacted to develop a fringe benefit manual?

13 A. My best recollection --

14 THE COURT: Plan or manual?

15 Q. Plan or manual?

16 A. My best recollection was Frederica Miller.

17 Q. And do you know if Frederica Miller was paid anything to do  
18 this work?

19 A. I have no idea.

20 Q. Now, in addition to the -- your wife had separate coverage,  
21 did she not?

22 A. My wife had separate coverage, yes.

23 Q. And CASI reimbursed you for your wife's medical expense,  
24 right?

25 A. Not our medical expense, our insurance.

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Gurfein - cross

1 Q. What kind of insurance?

2 A. It was a group insurance, I think. It was our portion of  
3 the group insurance.

4 Q. Group insurance covering what?

5 A. Covering medical.

6 Q. And were you also on the medical plan that CASI had for its  
7 employees?

8 A. No.

9 THE COURT: Whose group medical were you talking  
10 about?

11 THE WITNESS: My wife's medical. My wife was part of  
12 a group, and so --

13 THE COURT: I see. Different, separate group?

14 THE WITNESS: Again, there was no -- I must make a  
15 point. There was no policy, and Dr. Karron said, okay, we'll  
16 just pay your medical insurance. And the way it was set up,  
17 that my wife would be covered under that as well.

18 Q. And there were fringe benefits provided for in your budget,  
19 were there not?

20 A. Correct.

21 Q. And how much were the fringe benefits provided for in the  
22 CASI budget?

23 A. I would have to look that up. I don't know that exactly.  
24 The fringe benefits were probably 34 percent of the total  
25 payroll. The payroll -- and that first year says here

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Gurfein - cross

1     \$325,000. So fringe benefits should have been 34 percent of  
2     whatever that number is, which should be something over  
3     \$100,000, I think.

4     Q. And do you see on --so that was -- did you argue with Dr.  
5     Karron as to whether or not you -- your wife should be  
6     reimbursed for your medical insurance?

7     A. Argue? No, there was no argument. He -- there was never  
8     an argument about that.

9     Q. Did you say to him, I don't think that's an allowable  
10    fringe benefit?

11    A. No.

12    Q. Did you think it was allowable?

13    A. Based on the, the loose policy that he had established, it  
14    was.

15    Q. What about ATP, did you think that his loose policy  
16    violated the ATP --

17    A. I'm not sure how. If it was for me, within 34 percent of  
18    my, of my gross pay, it was not violating, no.

19    Q. Was it -- did you know of any rule that suggested that the  
20    fringe benefit amount was related to an individual's gross pay?

21    A. Yes.

22    Q. Where, where is it that it's -- where is the document that  
23    suggests that fringe benefits are in direct proportion to one's  
24    salary?

25    A. As far as -- I remember reading that in the documents.

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Gurfein - cross

1 Q. You had that discussion with Dr. Karron, did you not?

2 A. Yes. Well, we discussed the subject in general, more with  
3 respect to his requirements for medical than mine. I was way  
4 within the 34 percent.

5 Q. And his view was that if you had fringe benefits for the  
6 company, whatever was utilized, as long as it was a fringe  
7 benefit, anybody could use it?

8 A. I don't understand your question.

9 Q. Did you have a discussion with Dr. Karron as to the use of  
10 fringe benefits?

11 A. Yes.

12 Q. And didn't he advise you that it was his understanding that  
13 fringe benefits -- that he could utilize up to whatever fringe  
14 benefit money was not used by other employees that was  
15 available for him?

16 A. He said that.

17 Q. And are you aware -- did you have anything to do with the  
18 quarterly financial statements?

19 A. Yes.

20 Q. Did you help prepare them?

21 A. Yes.

22 Q. Where did you get the numbers from to put into the  
23 quarterly financial statements?

24 A. Those numbers were the aggregate of what was in the monthly  
25 applications for, for the various progress payments. That's

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Gurfein - cross

1 where these numbers came from.

2 Q. Did they come from actual expenses?

3 A. No, they did not.

4 Q. And who determined that that was the proper numbers, those  
5 were the proper numbers to use?

6 A. Well, the first time we went in after Dr. Karron withdrew  
7 the \$75,000, and we had we had a discussion about that, about  
8 how that \$75,000, for example, could be applied to direct -- on  
9 the direct charges for the grant, which we couldn't possibly do  
10 because it wasn't -- I mean that money was not spent on the  
11 grant. So Dr. Karron said just, okay, make it that it works;  
12 make sure that, you know, you don't raise any red flags and  
13 just submit the numbers that will make it work. And that's  
14 what we did.

15 Q. You are aware, sir, that Dr. Karron paid back that \$75,000  
16 in that first year; you're aware of that?

17 A. I am. But it caused us great pain to have that \$75,000  
18 taken out, so at the end of every month we were down to almost  
19 zero on the bank account.

20 Q. And whenever you got down to zero, Dr. Karron would put his  
21 own money into the company, correct?

22 A. I don't know that.

23 Q. Well, how did you get above zero?

24 A. We got another progress payment.

25 Q. Did you get a personal loan from CASI during this period?

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Gurfein - cross

- 1 A. Did I get a personal loan?
- 2 Q. Yes.
- 3 A. Not to my knowledge.
- 4 Q. Did you get a personal loan from Dr. Karron during this
- 5 period?
- 6 A. I don't remember that.
- 7 Q. You also had a telephone installed in your house related to
- 8 CASI business with the ATP grant, did you not?
- 9 A. Correct.
- 10 Q. And that telephone was paid for by CASI?
- 11 A. Correct.
- 12 Q. And you used that phone strictly for company business?
- 13 A. Correct.
- 14 Q. Did you have a credit card to use for CASI?
- 15 A. I don't recall if I had a credit card. If I did, it was
- 16 hardly used. In fact, I think I gave it back to him. If I had
- 17 one, I gave it back to him.
- 18 Q. At what point?
- 19 A. Right away. I mean it was -- I, I, I can't remember the,
- 20 any credit card being of any substance.
- 21 Q. Did you call anybody at ATP to report that Dr. Karron had
- 22 borrowed \$75,000?
- 23 A. I did not.
- 24 Q. When you say that you were, the company was short money,
- 25 there was \$800,000 deposited by early October or by the middle

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Gurfein - cross

1 of October into an account for you to drawdown; is that  
2 correct?

3 A. Incorrect.

4 Q. Where was the money that was given by ATP, the \$800,000,  
5 how did that --

6 A. The \$800,000 came in pieces. The first piece was 150,000  
7 and every month in the first year after that it was \$60,000.  
8 We had to apply for that money each month.

9 Q. Are you aware that you could have applied for the first --  
10 in the first month for the whole \$800,000?

11 A. I was not aware of that.

12 Q. So if somebody from ATP had testified here at the trial,  
13 you were unaware of that, correct?

14 A. I'm unaware of that.

15 Q. You were present at -- on November 8th, 2001 at what's  
16 called a kickoff meeting?

17 A. Yes. Yes, I was.

18 Q. And you went over rules and regulations with the people --

19 A. Yes.

20 Q. -- at NIST?

21 A. Correct.

22 Q. And I think you told us that you met Mark Stanley there?

23 A. I think I shook hands with him at most.

24 Q. And did Dr. Karron know Mark Stanley?

25 A. Yes.

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Gurfein - cross

1 Q. And they had a cordial comfortable relationship?

2 MR. EVERDELL: Objection.

3 THE COURT: Do you know? Were you present? Do you  
4 remember any of their meetings before the grant?

5 THE WITNESS: No, I was not.

6 Q. Well, did Dr. Karron or you discuss these, this agreement  
7 agreements you had with him as to whether or not an expense,  
8 was a proper NIST expense, you had a number of these discusses,  
9 correct?

10 A. Yes.

11 Q. And did he advise you that he would get the approval  
12 because NIST loved him and he bought items before he asked or  
13 received approval from NIST?

14 A. I can't hear what you're saying.

15 Q. Did he tell you that --

16 THE COURT: You better get back to the microphone, Mr.  
17 Rubinstein, because I couldn't hear half that question.

18 MR. RUBINSTEIN: Sorry.

19 Q. When you questioned the propriety of certain expenditures  
20 by Dr. Karron, without prior approval, and in fact that Dr.  
21 Karron told you that he would get approval because NIST loved  
22 him?

23 A. Yes, he said that.

24 Q. Did you bill a, and be reimbursed for parking while you  
25 were a CASI employee?

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Gurfein - cross

1 A. Yes.

2 Q. And did you also bill for travel?

3 A. For mileage you mean?

4 Q. Yes.

5 A. I don't recall the mileage. I recall I think parking at  
6 the meter. Possibly tolls. I don't remember that. That's  
7 possible. But I don't recall mileage, although that's possible  
8 too.

9 Q. Do you recall receiving an e-mail from Dr. Karron  
10 requesting that you repay certain expenses that were not  
11 approved by ATP?

12 A. I don't recall such an e-mail.

13 (Continued on next page)

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Gurfein - cross

1 BY MR. RUBINSTEIN:

2 Q. Let me show you this document and mark it as -- it's part  
3 of actually government's 3507-S, at page 27 of 28 pages.

4 THE COURT: 3507 what?

5 Q. Before you testified, did you have an opportunity, sir, to  
6 go over e-mails that either you sent or that were sent to you?

7 A. No, not particularly, no.

8 Q. You are Elisha Gurfein and your e-mail address is  
9 egurfein@earthlink.net, right?

10 A. Correct.

11 Q. Is that correct, sir?

12 A. Yes.

13 Q. I direct your attention to page 28.

14 A. Page 28?

15 Q. Take a look at this page here.

16 THE COURT: Page what?

17 MR. RUBINSTEIN: It's page 27, your Honor, and 28.

18 THE COURT: What's the date?

19 THE WITNESS: This e-mail was dated February 1, 2003.

20 I don't recall ever receiving this e-mail. This is more than  
21 six months or so after I left. I don't remember seeing this  
22 e-mail.

23 THE COURT: Who is the e-mail from?

24 MR. RUBINSTEIN: It's from Dr. Karron to Mr. Gurfein.

25 And I would offer this portion of Government's 3507-S.

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Gurfein - cross

1 MR. EVERDELL: Objection, your Honor.

2 THE COURT: Sorry?

3 MR. EVERDELL: Objection.

4 THE COURT: I didn't hear the statement.

5 MR. EVERDELL: He is offering the e-mail in evidence.

6 THE COURT: Objection sustained.

7 Q. Well, is it a fact, sir, while in the year you had worked  
8 for CASI you had charged \$2,000 for parking?

9 A. I don't remember that number, no.

10 Q. Do you recall charging CASI \$1,589 for travel?

11 A. I don't recall that number either.

12 Q. Do you recall being asked by Dr. Karron to provide backup  
13 and justification for expenses that you had?

14 A. No.

15 Q. Now, there was, was there not, in the budget that we are  
16 talking about, \$110,500 approved for fringe benefits, correct?

17 A. Show me where that is.

18 Q. Do you still have that Exhibit 22 in front of you?

19 A. Hold on. What page is that on here?

20 THE COURT: 22, it's the third page in what he is  
21 asking about.

22 MR. RUBINSTEIN: Judge, I think, with all due respect,  
23 the fourth page in.

24 THE WITNESS: What page?

25 MR. RUBINSTEIN: If you look on page 4, or on page 3

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Gurfein - cross

1 as the court said.

2 THE WITNESS: I am looking for a figure of \$110,500.

3 I do not see that. Oh, yes, I do. Sorry, I do see it.

4 Q. Now, who was the accountant for CASI when you first started  
5 working there?

6 A. Jill Feldman, I think.

7 Q. And did you have contact with her?

8 A. Brief.

9 Q. Was she replaced?

10 A. Yes.

11 Q. And who replaced her?

12 A. Joan Hayes.

13 Q. Approximately when was that?

14 A. It was later. I'm not sure exactly when Joan came into the  
15 picture.

16 Q. And what was her function as the accountant for CASI?

17 THE COURT: Which one? Hayes?

18 MR. RUBINSTEIN: Hayes.

19 A. What was Hayes' function?

20 Q. Yeah. Did she work under you? You were the business  
21 manager?

22 A. No, no. You have to remember all my authority was taken  
23 from me by Dr. Karron. The idea that I had any authority over  
24 anybody is just fallacious.

25 Q. That letter merely said that you couldn't sign checks,

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Gurfein - cross

1 right?

2 A. That's correct.

3 Q. You were getting paid a gross salary of \$100,000 a year,  
4 right?

5 A. Correct.

6 Q. And Joan Hayes was working there as an accountant, correct?

7 A. Correct.

8 Q. Did you see her when you went there to CASI?

9 A. Sure.

10 Q. How often -- you said you would be there like three days a  
11 week?

12 A. The question is how often was she there when I was there.  
13 That varied.

14 Q. How often would you see her?

15 A. She would be there during a certain time interval. I  
16 remember seeing her there more often than others but that was  
17 later on. She started showing up there later on, not early in  
18 the project, not in the first year anyhow.

19 Q. Well, when you say the first year, you mean 2001.

20 A. Well, October 1, 2001 until September 30, 2002 when I was  
21 there. That's the first year of the grant.

22 Q. So, you did not see her often when you were --

23 A. Oh, I saw her very often towards the end of that period I  
24 just mentioned, but not at the beginning.

25 Q. Would you see her at all?

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Gurfein - cross

1 A. Sure.

2 Q. In the beginning?

3 A. She wasn't on in the beginning. Jill Feldman was on in the  
4 beginning.

5 Q. Jill Feldman left early in 2002, did she not?

6 A. Yeah, I don't remember the exact date.

7 Q. Is it your understanding that Hayes had purchased Jill  
8 Feldman's practice?

9 MR. EVERDELL: Objection.

10 THE COURT: Sustained.

11 Q. Well, did you observe -- by the way, did you have access to  
12 the computer at CASI?

13 A. Did I have access to it?

14 Q. Right.

15 A. What does that mean?

16 MR. EVERDELL: Objection.

17 Q. Could you use the computer at CASI?

18 A. Yeah, sure.

19 Q. Were you aware that --

20 THE COURT: You are talking about the business  
21 computer?

22 MR. RUBINSTEIN: Yes.

23 Q. Were you aware that they had a program, software program  
24 called Quick Books, installed?

25 A. Yes.

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Gurfein - cross

1 Q. And are you aware that that was purchased prior to October  
2 1, 2001, with funds of Dr. Karron?

3 A. I did not know that.

4 Q. But you knew it when you were working there that this Quick  
5 Book system was in effect.

6 A. Yes.

7 Q. And also were you aware that there was a program in effect  
8 to scan all documents into that same computer system?

9 A. Yes.

10 Q. Did you participate in scanning documents into --

11 A. No.

12 Q. Did you participate in that Quick Book system generating  
13 its own checks?

14 A. No.

15 Q. Did it?

16 A. That it generated its own checks? Did I take part in that?  
17 No.

18 Q. No, no, but did the system generate a check?

19 A. I'm sorry?

20 Q. The Quick Book system, did it generate checks?

21 A. I don't know that.

22 Q. Is it fair to say that Dr. Karron would have virtually  
23 every piece of paper that came into the CASI --

24 MR. EVERDELL: Objection.

25 Q. -- grant scanned?

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Gurfein - cross

1           THE COURT:  Objection sustained.

2       Q.  Well, who did you see scan documents into that computer  
3       system?

4       A.  Dr. Karron for the most part, and maybe some other people.

5       Q.  Well, Margaret Ferrand, did you see her scan anything?

6       A.  No.

7       Q.  As a matter of fact, how many people were the maximum that  
8       were working at CASI at 300 East 33rd Street at one time?

9       A.  I can't say for sure at this point.  Working for CASI on  
10      the grant?

11      Q.  Yes.

12      A.  Well, various people came and left, so it's a little bit  
13      hard to really know that number exactly.  If you ask me how  
14      many people would be present at any one time in that living  
15      room?  I would say probably maybe a maximum of six or seven at  
16      the most.  At most.  But that was not the usual.

17      Q.  But you could have as many as that.

18      A.  That would be the absolute maximum, seven maybe, probably  
19      less.

20      Q.  Were there also volunteers that Dr. Karron had recruited to  
21      work on this project?

22      A.  I think he might have had a graduate student or two like  
23      that.

24           THE COURT:  Would your six or seven include the  
25      volunteers, or are you excluding the volunteers?

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Gurfein - cross

1           THE WITNESS: I don't recall, your Honor, seeing a  
2 group more than -- except when there was a site review with  
3 people from NIST, I don't recall seeing more than half a dozen  
4 people, maybe seven, at any one time.

5 Q. How about -- was Dr. Wolberg there?

6 A. Rarely.

7 Q. Was Jim Cox there?

8 A. Yes.

9 Q. Was Matt Rothman there?

10 A. Yes.

11 Q. Scott Albin?

12 A. Scott Albin? Yes, but not all at the same time.

13 Q. And you said there was a living room. Was there any living  
14 room furniture in there?

15 A. De minimis.

16 Q. In fact it was basically a computer lab, correct?

17 A. For the most part, correct.

18 Q. Let me show you what has been marked as BBB for  
19 identification and also marked CCC for identification. I show  
20 you these two pages of photographs, and these are the letters.  
21 Take a look at defendant's BBB for identification.

22 A. Yes.

23 Q. Tell me if you recognize what's depicted in those  
24 photographs.

25           THE COURT: The question is: Is it a fair and

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Gurfein - cross

1 accurate representation?

2 THE WITNESS: Yes, this appears to be Dr. Karron's  
3 living room as I remember it.

4 MR. RUBINSTEIN: I would offer BBB into evidence, your  
5 Honor.

6 MR. EVERDELL: No objection.

7 THE COURT: BBB is admitted in evidence.

8 DEPUTY COURT CLERK: Judge, I think that's already in.

9 THE COURT: It is in evidence. I'm sorry.

10 MR. RUBINSTEIN: No, it wasn't. It was marked for  
11 identification.

12 THE COURT: I think the government consented to it in  
13 evidence. Go ahead.

14 MR. RUBINSTEIN: CCC?

15 THE COURT: You had them up on the board, didn't we?  
16 Aren't these the pictures we had up on the screen.

17 MR. RUBINSTEIN: Oh, I'm sorry. She said she couldn't  
18 testify about it, I think. Thank you, Robert. You're right.  
19 I apologize.

20 THE COURT: Go ahead.

21 Q. You recognize what the photographs are depicted in CCC?

22 A. Not all of the items I do recognize in CCC. I recognize --

23 MR. RUBINSTEIN: May I approach the witness?

24 A. I recognize the bathroom, not much else. I never saw this  
25 sign. I don't remember this here. I remember this. I

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Gurfein - cross

1 remember this telephone situation in the bathroom, but I don't  
2 remember anything else on this page.

3 Q. Do you recall anything about Dr. Karron's room itself?

4 A. There were some computers in there.

5 Q. That's his bedroom.

6 A. Yes.

7 MR. RUBINSTEIN: Let me publish BBB for the jury.

8 Q. Now, starting, sir, at the top left as we look at this  
9 exhibit, what portion of the area referred to as the living  
10 room was this?

11 A. What does that mean?

12 Q. Well, do you see that large -- let me point to it -- I'm  
13 pointing this at something shown on the right hand -- there are  
14 six photographs, correct?

15 A. Yes.

16 Q. In this exhibit? This is on the right-hand side, the  
17 middle photograph. Do you recognize what that is?

18 A. That looks like a screen, but I --

19 Q. How about down here on the lower right?

20 A. That looks like a screen.

21 Q. Was there a screen at that facility?

22 A. There was one installed while I was there.

23 Q. And who installed it?

24 A. Abe Karron, to my knowledge. I saw him install it.

25 Q. And that was a screen similar to the screen that we have

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Gurfein - cross

1 here. I mean --

2 A. Yes, for a room that's about one quarter the size or one  
3 fifth the size.

4 Q. And there was also a projector similar to the projector  
5 right over here, correct?

6 A. Probably was, yeah.

7 Q. Do you recognize this item that's in evidence as Government  
8 Exhibit 123?

9 A. Well, not explicitly, but I could have seen it before.

10 Q. OK. Now, were you ever present when presentations were  
11 made by the people at CASI on this ATP project?

12 A. Yes.

13 Q. And when presentations were made, was that screen utilized?

14 A. One time I was at such a presentation, yes.

15 Q. And who else was present?

16 A. Dr. Karron and a whole bunch of other people, including  
17 Jayne Orthwein and B.J. Lide and some other people.

18 Q. Are you aware -- are you aware that Dr. Karron would go  
19 sometimes to New Jersey to lecture and was called upon to  
20 lecture on the ATP project?

21 A. New Jersey? Not to my knowledge.

22 Q. Anywhere.

23 A. If it happened, it was on no regular basis that I knew  
24 about.

25 Q. Now, going to the top picture on the left, do you see, are

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Gurfein - cross

1 those two computers?

2 A. Yes.

3 Q. And --

4 A. Well, they're monitors, anyhow.

5 Q. Monitors. And are those the monitors you discussed before,  
6 the ones that cost --

7 A. I don't think so.

8 Q. And these, do you see those shelves?

9 A. Yes.

10 Q. Do you know who constructed those shelves?

11 A. No.

12 Q. Do you know what was contained on those shelves?

13 A. Oh, various books and records, I think.

14 Q. By the way, was there an installation of wiring done in  
15 that room?

16 A. In the living room?

17 Q. Right.

18 A. An installation of wiring?

19 Q. Right.

20 A. Probably.

21 Q. Was there an increase in the air conditioning?

22 A. There certainly was.

23 Q. It would get pretty hot in there, would it not?

24 A. It did.

25 Q. Between the computers and all the people?

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Gurfein - cross

1 A. Yes.

2 Q. And was it messy in there?

3 A. Was it what?

4 Q. Messy.

5 MR. EVERDELL: Objection. Objection.

6 THE COURT: Objection sustained. I don't see the  
7 relevance of that.

8 Q. Well, you testified --

9 THE COURT: Please go ahead. No speaking objections.  
10 Ask another question.

11 Q. Do you know a person named Chris Wegner?

12 A. I met Chris Wegner.

13 Q. And are you aware that Chris Wegner was a former employee  
14 of CASI?

15 A. I do.

16 Q. And are you aware that when Chris Wegner was an employee of  
17 CASI prior -- withdrawn -- that Chris Wegner had surgery  
18 performed and was paid for by CASI?

19 A. That's possible, yes.

20 THE COURT: Was this during the grant period or not in  
21 the grant period? We're talking about the grant period,  
22 Mr. Rubinstein.

23 Mr. Gurfein, are we talking about the grant period?

24 THE WITNESS: I don't know when that was paid for, but  
25 I don't think it was paid for during the grant period.

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Gurfein - cross

1 Q. But it was customary for CASI before they got the grant to  
2 have these -- to pay for employee's benefits, right?

3 MR. EVERDELL: Objection.

4 THE COURT: You weren't connected with CASI until the  
5 time -- you don't have knowledge of anything --

6 THE WITNESS: No. I have knowledge, but I think it  
7 was prior to my being with CASI.

8 THE COURT: But you don't have knowledge of anything  
9 that happened before you. You don't have personal knowledge of  
10 anything that happened before you were at CASI.

11 THE WITNESS: Correct.

12 THE COURT: Do you have knowledge of this?

13 THE WITNESS: Dr. --

14 THE COURT: Personal knowledge.

15 THE WITNESS: Dr. Karron told me that --

16 THE COURT: No, all right. That's hearsay.

17 Q. When you were discussing with Dr. Karron the medical  
18 expenses that you testified to before, did Dr. Karron in  
19 response tell you anything about the policies of his company?

20 A. He said to me that in the case of Chris Wegner he got I  
21 think it was \$10,000 from some other funds other than NIST  
22 funds to pay for that surgery. That's what he told me.

23 Q. Did he tell you what his policy was for employees and  
24 fringe benefits and health benefits prior to getting the grant?

25 A. Prior to getting the grant?

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Gurfein - cross

1 Q. Right.

2 A. No, he didn't tell me what the policy was prior to getting  
3 the grant.

4 Q. Did you ever ask him if he ever charged any -- what kind of  
5 fringe benefits he was accustomed to paying prior to getting  
6 the grant?

7 A. In the most general way I know that his policy unwritten  
8 was very loose.

9 Q. Now, were you involved in the hiring of Joan Hayes?

10 A. No.

11 Q. Did you have dealings with her involving any financial  
12 documents?

13 A. Yes.

14 Q. Which financial documents were those?

15 A. I don't remember.

16 Q. You filed I believe the quarterly financial statements?

17 A. Yes.

18 Q. And did Ms. Hayes provide any of the figures that you  
19 incorporated in those filings?

20 A. I don't think so. It's possible, but I don't recall that.

21 THE COURT: Where did you get the figures?

22 THE WITNESS: Well, basically the figures were not  
23 representative of what was actually spent but representative of  
24 what was received from NIST.

25 THE COURT: So where did you get the figures?

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Gurfein - cross

1           THE WITNESS: Well, the figures for the quarterly  
2 reports were basically a summation of data in the applications  
3 made for the prior three months to NIST for the progress  
4 payments, where we had to report what was done in the prior  
5 month.

6           THE COURT: Where would you get those figures?

7           THE WITNESS: Well, those figures would again be  
8 gotten from essentially from what we received as opposed to  
9 having the correct figures, which would have been what was  
10 actually spent directly on the project.

11          THE COURT: Well, what you received was \$150,000 and  
12 then monthly payments of --

13          THE WITNESS: -- 60,000.

14          THE COURT: -- 60 or 65.

15          THE WITNESS: 60.

16          THE COURT: So those don't tell you the break-down.

17          THE WITNESS: No.

18          THE COURT: Does the quarterly report show a  
19 break-down?

20          THE WITNESS: No, no break-down of the quarterly  
21 report.

22          THE COURT: Let me see a quarterly report.

23          MR. EVERDELL: Your Honor, Government Exhibit 40 for  
24 example.

25          THE COURT: He has one. He has handed me one.

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Gurfein - cross

1 Exhibit 21, the cover page. I see. But this isn't one that  
2 was filed by you. This is an amendment to the financial  
3 assistance report.

4 THE WITNESS: I apologize.

5 MR. EVERDELL: Your Honor, I think this is one.

6 THE WITNESS: I'm sorry. Wrong item.

7 THE COURT: Here is one, Government Exhibit 40. That  
8 was allegedly filed January 10, 2002. And this shows the total  
9 amount received and the total amount contributed by CASI --

10 THE WITNESS: Correct.

11 THE COURT: -- to this award. The total amount of  
12 funds received in that quarter and the total contribution  
13 allegedly made by CASI.

14 THE WITNESS: Correct.

15 THE COURT: Where did you get the figure for the  
16 amount that CASI contributed?

17 THE WITNESS: Well, CASI didn't contribute anything.  
18 These numbers were backed into essentially to make it look  
19 right, because that's what I was told to do.

20 THE COURT: By whom?

21 THE WITNESS: By Dr. Karron.

22 THE COURT: That's true for the next quarter and next  
23 quarter? Did you file a next quarter?

24 THE WITNESS: I filed for the first quarter, the  
25 second quarter, the third quarter. The fourth quarter I don't

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Gurfein - cross

1 recall filing because I was not there anymore.

2 THE COURT: And they were done on all three quarters  
3 in the same fashion?

4 THE WITNESS: Yes.

5 Q. Now, you were at CASI, were you not, in April of 2002,  
6 correct?

7 A. Yes.

8 Q. And are you aware that an amended financial status report  
9 was filed in April of 2002?

10 A. I'm not sure I remember that.

11 Q. Let me show you what's in evidence as Government Exhibit  
12 2000. And I will leave 2001 up there.

13 THE COURT: 2000 and 2001.

14 Q. Do you want to review those documents, sir?

15 A. Yes.

16 Q. Do you recognize those documents?

17 A. Well, yes.

18 Q. And did you file those documents?

19 A. No, Dr. Karron filed them.

20 Q. And did you assist him in preparing them?

21 A. Yes.

22 Q. And did Joan Hayes assist in preparing them?

23 A. I don't remember that.

24 Q. Well, do you recall that you were attempting to get a  
25 budget revision in November of 2001, December 2001?

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Gurfein - cross

1 A. A budget --

2 Q. -- revision.

3 A. Yes.

4 Q. And you were talking to Hope Snowden about it?

5 A. Yes.

6 Q. And Hope Snowden at some time suggested you call Jayne  
7 Orthwein to discuss the changes?

8 A. I frankly don't recall that, but it's possible.

9 Q. Well, let me show you --

10 THE COURT: We don't want it's possible. You either  
11 recall it or you don't recall it.

12 THE WITNESS: I don't recall it.

13 THE COURT: Anything is possible.

14 Q. Let me show you what's marked for identification as  
15 Defendant's DDD.

16 DEPUTY COURT CLERK: Defendant's BBB?

17 MR. RUBINSTEIN: D, dog dog dog. See if this  
18 refreshes your recollection, sir.

19 MR. KWOK: May I see it?

20 THE WITNESS: Now that I read it, I frankly don't  
21 recall it that well, but, yes, I see it and --

22 THE COURT: No, just what you recall. It's only being  
23 shown to you if it refreshes your recollection. Don't read the  
24 document into the record. If it refreshes your recollection,  
25 say yes it does refresh your recollection.

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Gurfein - cross

1 THE WITNESS: It does not. I don't recall this.

2 Q. That is an e-mail that was sent from you to Dr. Karron, was  
3 it not, on December 7, 2001?

4 MR. EVERDELL: Objection, your Honor. He said it  
5 doesn't refresh his recollection.

6 MR. RUBINSTEIN: Well then I'm offering it into  
7 evidence.

8 THE COURT: Well, wait a minutes. December 7 -- he  
9 can't read it until it's admitted into evidence in the first  
10 place.

11 MR. RUBINSTEIN: Correct.

12 THE COURT: But what you showed him was something that  
13 was submitted sometime in April, and now you are talking about  
14 December. There is no relationship in the dates of your  
15 questions.

16 MR. RUBINSTEIN: I think there is, Judge.

17 THE COURT: Well, you may think there is, but this way  
18 precedes the date you were inquiring about by more than three  
19 months.

20 MR. RUBINSTEIN: Judge, this is an e-mail sent by this  
21 witness.

22 THE COURT: Look, it may be, but you told me the date.  
23 Now, I don't want to hear a speaking objection. Bring it over  
24 here to the side. There is an objection about it, let's get it  
25 cleared up.

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Gurfein - cross

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Gurfein - cross

1 (At the sidebar)

2 MR. EVERDELL: This is the document, your Honor.

3 THE COURT: I have no idea.

4 MR. EVERDELL: The defense counsel is using this to  
5 try to refresh the witness's recollection. He hasn't had his  
6 recollection refreshed, so it can't be used for that purpose  
7 any more. He can't admit it in evidence because he doesn't  
8 recognize the e-mail. There is no way to admit this into  
9 evidence.

10 MR. RUBINSTEIN: He does recognize the e-mail account.  
11 It's his account.

12 MR. EVERDELL: He says he doesn't remember it.

13 MR. RUBINSTEIN: No, he doesn't remember this  
14 document, this e-mail.

15 THE COURT: He doesn't remember it, and he has  
16 admitted already that he attempted to go above Hope Snowden on  
17 one occasion to get an approval.

18 MR. RUBINSTEIN: Right. And, Judge --

19 THE COURT: He has already testified to that. This  
20 doesn't add a thing.

21 MR. RUBINSTEIN: Judge, the fact of the matter is that  
22 there is an entire line coming from Hope Snowden of these  
23 negotiations, all the while she kept asking for revisions.

24 THE COURT: He has already testified about that.

25 MR. RUBINSTEIN: No, he didn't.

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Gurfein - cross

1 THE COURT: Yes, he did testify about it,  
2 Mr. Rubinstein.

3 Now, how much longer are you going to be?

4 MR. RUBINSTEIN: Probably half hour, 45 minutes.

5 MR. EVERDELL: Your Honor, my direct was how long?

6 THE COURT: Well. Sorry, we will have to go on a  
7 little while longer.

8 (Continued on next page)

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Gurfein - cross

1 (In open court)

2 MR. RUBINSTEIN: You do remember attempting to get a  
3 budget revision near the end of 2001?

4 MR. EVERDELL: Objection.

5 THE COURT: He has already testified about that. He  
6 said yes he did try to get them. He said that several times.

7 That's the court's recollection. It's the jury's  
8 recollection that governs.

9 Q. How many budget revisions were submitted between December  
10 2001 and February 2002?

11 A. I don't remember.

12 Q. You do recall Hope Snowden -- having conversations with  
13 Hope Snowden, correct?

14 A. Yes.

15 Q. And you recall her asking you or CASI to submit revised  
16 budget requests?

17 A. Well, we discussed changes in the budget, yes.

18 Q. And do you recall preparing or participating in the  
19 preparation of revised budget?

20 A. Yes.

21 Q. And did you consult with Joan Hayes as to the figures, the  
22 actual figures that were expended by CASI during the grant  
23 period?

24 A. At which point?

25 Q. While you were negotiating with Hope Snowden to get a

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Gurfein - cross

1 revised budget.

2 A. At which point?

3 MR. EVERDELL: Objection.

4 Q. Well, at what point were you negotiating with Hope Snowden?

5 A. I don't recall explicitly, but it was early on.

6 Q. At what point in your negotiation did you consult with Joan  
7 Hayes about what numbers were to be utilized?

8 THE COURT: If you did.

9 THE WITNESS: I don't recall consulting with Joan  
10 Hayes.

11 Q. Now, you had testified before that there were a number of  
12 lawyers associated with CASI?

13 A. Yes.

14 Q. And you said there was a Mr. Bernstein?

15 A. Yes.

16 Q. You said there was a Ms. Miller?

17 A. Yes.

18 Q. And were there other attorneys?

19 A. Those are the only ones I remember.

20 MR. EVERDELL: Objection.

21 THE COURT: Those are the only ones he remembers.

22 Q. Did you ever discuss with any of those attorneys about the  
23 expenses that Dr. Karron was charging towards the NIST budget?

24 MR. EVERDELL: Objection, relevance.

25 THE COURT: I will allow the question.

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Gurfein - cross

1 A. I don't recall those discussions on that point.

2 Q. Did you ever talk to Hope Snowden or anybody at ATP as to  
3 any specific expense that Dr. Karron was charging to NIST?

4 A. What kind of expense?

5 Q. Any kind of expense.

6 A. That's very broad. I'm trying to --

7 THE COURT: Did you ever tell him that he was spending  
8 money that was not provided for in the budget and attributing  
9 it to NIST?

10 THE WITNESS: I don't recall that conversation.

11 Q. As a matter of fact, Joan Hayes was Dr. Karron's personal  
12 accountant, was she not?

13 A. I don't know that either. I didn't know that.

14 Q. Are you aware of whether or not Joan Hayes prepared Dr.  
15 Karron's personal tax returns --

16 MR. EVERDELL: Objection.

17 Q. -- for '99, 2000 and 2001?

18 MR. EVERDELL: Objection.

19 A. I don't know that.

20 THE COURT: He doesn't know that.

21 Q. Did you ever in your discussions with Dr. Karron about your  
22 view of what was allowable and not allowable, tell him that if  
23 he did it his way he could wind up in jail?

24 A. I told him that he can't do just anything he wanted to do  
25 like he thought he could. He thought he could spend the way he

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Gurfein - cross

1 thought he could spend and not necessarily the way the rules  
2 said he could spend.

3 Q. Did you ever say to him, you know, I think you might be  
4 committing a crime by doing what you're doing?

5 A. Maybe not in those words but along those lines.

6 MR. RUBINSTEIN: No further questions, your Honor.

7 THE COURT: Any redirect?

8 MR. EVERDELL: Five minutes, your Honor?

9 THE COURT: Five minutes, and that's it, no more.

10 REDIRECT EXAMINATION

11 BY MR. EVERDELL:

12 Q. All right. Mr. Gurfein, you testified on cross-examination  
13 about a conversation you had with defendant's brother Abe  
14 Karron, is that correct?

15 A. Yes.

16 Q. That conversation related to a possible investment of  
17 \$50,000 in the company?

18 A. Yes.

19 Q. Can you explain more broadly what the circumstances of that  
20 conversation were?

21 A. This conversation was about my having the -- the  
22 conversation was about the fact that my signature authority was  
23 taken away, and I thought that was a mistake, and his response  
24 was if you invest \$50,000 in the company you can have that  
25 responsibility back. And I said I'm not investing \$50,000 into

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Gurfein - redirect

1 this company, it is too risky.

2 In fact this is the point to be made. One of the  
3 reasons for getting the ATP grant in fact is because it is  
4 given to risky ventures that have difficulty raising funds in  
5 the private sector, and that's one of the purposes and one of  
6 the criteria for getting the award. So, I told him no, and I  
7 of course did not give the 50,000, nor did I get the signature  
8 authority back.

9 Q. You testified also on cross-examination about some  
10 quarterly financial reports.

11 A. Yes.

12 Q. And I believe you testified that the defendant told you to  
13 make it work, is that correct?

14 A. That's correct.

15 Q. Who actually signed those financial reports that were  
16 submitted?

17 A. Dr. Karron.

18 Q. Did you sign those financial reports?

19 A. I did not. I had no such authority.

20 THE COURT: Are you aware of any contributions to the  
21 capital of CASI that were made by anyone other than NIST?

22 THE WITNESS: No, I'm not aware of any such  
23 contributions.

24 Q. You were also asked about a screen in the defendant's  
25 apartment, is that correct?

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Gurfein - redirect

1 A. Yes.

2 Q. You said you recalled when that was installed?

3 A. Yes.

4 Q. Do you recall how much was paid for the installation?

5 A. I think Abe Karron was paid \$3,000 roughly for that.

6 Q. And you said I believe on cross-examination in response to  
7 questions about the defendant getting costs approved, that he  
8 would be able to do it because NIST loved him?

9 A. Yes.

10 Q. Did you ever have any conversation with the defendant along  
11 those lines?

12 A. Yes, it was a constant refrain: They love me, they'll  
13 approve it.

14 MR. EVERDELL: One moment. No further questions, your  
15 Honor.

16 THE COURT: Within the scope, Mr. Rubinstein.

17 MR. RUBINSTEIN: Yes.

18 RECROSS EXAMINATION

19 BY MR. RUBINSTEIN:

20 Q. Let me show you what is marked as Defendant's FFF for  
21 identification and ask you, number one, if you recognize --

22 MR. EVERDELL: Can I see it?

23 Q. -- the signatures on those documents.

24 MR. EVERDELL: Can I see the document?

25 THE COURT: You have to show it to the government

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Gurfein - recross

1 first.

2 MR. RUBINSTEIN: I am, your Honor.

3 Q. Do you recognize Dr. Karron's signature on those documents,  
4 sir?

5 I even have a copy for your Honor.

6 A. I recognize his signature on these documents, yes.

7 Q. And do you recognize the check -- the name on the check --  
8 checks?

9 MR. EVERDELL: Your Honor, I'm going to object to  
10 this. This is clearly going to be outside the scope of the  
11 redirect.

12 MR. RUBINSTEIN: That's what they asked on redirect.

13 THE COURT: I asked it.

14 MR. RUBINSTEIN: That counts too, Judge.

15 THE COURT: I did it. I opened that door. Go ahead.

16 MR. RUBINSTEIN: Thank you.

17 A. Yes, I see them.

18 THE COURT: Had you ever seen them before?

19 THE WITNESS: No.

20 MR. RUBINSTEIN: We offer Defendant's FFF --

21 MR. EVERDELL: Objection.

22 MR. RUBINSTEIN: -- into evidence.

23 MR. EVERDELL: The witness has never seen them.

24 THE COURT: He can't authenticate them.

25 MR. RUBINSTEIN: He has authenticated them.

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Gurfein - recross

1 THE COURT: He says they're Karron's signature, but he  
2 has never seen them before.

3 Next question.

4 Q. You received personal checks from Dr. Karron, have you not?

5 MR. EVERDELL: Objection.

6 THE COURT: You're not going to be able to get them  
7 in. If he has never seen these checks before, you cannot get  
8 them in that way.

9 MR. RUBINSTEIN: Let me ask it this way.

10 Q. Does that refresh your recollection as to whether or not  
11 you ever had a conversation with Dr. Karron about him loaning  
12 CASI money during the grant period?

13 A. I do not recall that.

14 Q. By the way, the contract that you signed --

15 MR. EVERDELL: Objection.

16 THE COURT: Objection sustained. That's outside the  
17 scope.

18 MR. RUBINSTEIN: This is not outside, Judge. With all  
19 due respect, can I ask the question?

20 THE COURT: The way you started it, you talked about  
21 something that was not in the scope, so you better get it into  
22 the scope.

23 Q. When your authority was taken away in October of 2001, did  
24 you resign from CASI?

25 A. No.

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Gurfein - recross

1 MR. RUBINSTEIN: No further questions.

2 MR. EVERDELL: No further questions, your Honor.

3 THE COURT: All right.

4 Jury is excused until 9:30 tomorrow morning.

5 MR. RUBINSTEIN: Just one moment. Just one moment. I  
6 just found something that I just want to --

7 THE COURT: Come on, we can't wait for this.

8 MR. RUBINSTEIN: I have one document. It's going to  
9 come out of the computer right now.

10 BY MR. RUBINSTEIN:

11 Q. Isn't it a fact that Dr. Karron loaned you \$4,000 on July  
12 3, 2002?

13 MR. EVERDELL: Objection.

14 THE COURT: I will allow the question.

15 A. July 3, 2002?

16 Q. Correct.

17 A. I don't remember that.

18 Q. I show you this document.

19 THE COURT: Does that refresh your recollection?

20 THE WITNESS: Yeah, a little bit, but I really don't  
21 recall. I don't recall this or the reason for it.

22 Oh, here is what it says. It says as a memo, "loan  
23 against frozen salary." That's what it says.

24 THE COURT: Do you remember that?

25 Q. So, you remember it now?

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Gurfein - recross

1 A. Well, yeah, a little bit better, yeah.

2 Q. Last question. That refreshes your recollection that in  
3 July 2002 Dr. Karron loaned you \$4,000, correct?

4 A. Correct.

5 THE COURT: How much?

6 THE WITNESS: \$4,000.

7 MR. RUBINSTEIN: No further questions.

8 THE COURT: All right.

9 MR. EVERDELL: No further questions, your Honor.

10 THE COURT: Excuse me?

11 MR. EVERDELL: No further questions.

12 THE COURT: All right. The jury is excused. We will  
13 see you at 9:30 tomorrow morning.

14 (Continued on next page)

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Gurfein - recross

1 (Jury not present)

2 THE COURT: Now, we better be in here what time? Who  
3 is your next witness?

4 MR. EVERDELL: Well, your Honor, we should probably  
5 discuss --

6 MR. KWOK: I think, your Honor, tomorrow we will -- if  
7 Mr. Rubinstein has further cross-examination of our prior  
8 witness, Belinda Riley, we can proceed with that, and then the  
9 government will call its next witness Frank Spring.

10 THE COURT: Frank who?

11 MR. EVERDELL: Spring.

12 THE COURT: How many more witnesses have you got?

13 MR. EVERDELL: The continuation of Ms. Riley,  
14 Mr. Spring and Bob Benedict. And I anticipate that Mr. Spring  
15 and Bob Benedict will be a similar length as Mr. Gurfein. I  
16 can't account for cross, but the direct will be a similar  
17 length.

18 THE COURT: All right.

19 Do you have anything else to come before the court?

20 MR. RUBINSTEIN: No, your Honor.

21 MR. KWOK: No, your Honor.

22 THE COURT: All right. You better be in here at 9  
23 o'clock if we have Ms. Riley. Oh, I have a telephone  
24 conference at nine, so make it 9:15 as usual.

25 (Trial adjourned to June 6, 2008 at 9:15 a.m.)

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1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, New York, N.Y.

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4 v. S2 07 CR 541 (RPP)

4

5 DANIEL B. KARRON,

5

6 Defendant.

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7 -----x

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8 June 6, 2008

9 9:15 a.m.

9

10

10 Before:

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11 HON. ROBERT P. PATTERSON, JR.,

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12 District Judge

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13

14 APPEARANCES

14

15 MICHAEL J. GARCIA

15 United States Attorney for the

16 Southern District of New York

16 BY: STEVEN KWOK

17 CHRISTIAN EVERDELL

17 Assistant United States Attorneys

18

18 RUBINSTEIN & COROZZO, LLP

19 Attorneys for Defendant

19 BY: RONALD RUBINSTEIN

20

20 Also Present: Rachel Ondrik, U.S. Dept. of Commerce

21 Kirk Yamatani, U.S. Dept. of Commerce

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning. We have a note from a juror  
3 received yesterday afternoon to Judge Patterson. "I'd like to  
4 speak with you about my need to follow up with my medical  
5 situation. Your time would be much appreciated. Thank you."

6 I think this is Juror 7, Christine Hull. My  
7 recollection is that she did not have an appointment during  
8 jury selection but was trying to get an appointment for medical  
9 follow-up, and I suggested she try and do it after the  
10 scheduled trial, but I don't know the nature of her medical  
11 follow-up. Of course if it's a life-threatening disease, I  
12 would have problems. So, I guess we better have her in here  
13 and listen to her, and I will decide accordingly.

14 We still have three jurors. If this case goes over  
15 two weeks, we will probably lose Juror 1; and if it goes three  
16 weeks, we lose Juror 8, the former alternate Juror 1. And who  
17 knows what else.

18 Now, how are we coming on trial? There are two  
19 witnesses the government has, is that it?

20 MR. EVERDELL: Yes, your Honor. The government after  
21 we finish with Ms. Riley has two more witnesses. As I think I  
22 indicated yesterday, they are along the lines of Mr. Gurfein in  
23 length. One witness has some e-mails that we need to introduce  
24 through him. That's Frank Spring. So that may take a little  
25 longer just with the introduction of exhibits, but it would

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1 take -- roughly along the lines -- the direct at least will  
2 take roughly along the lines of what it took for Mr. Gurfein.

3 THE COURT: Well, we have to make progress here.

4 Let me say something while that subject is up. I am  
5 concerned that the government -- as I hear the evidence that's  
6 coming in, I'm not sure that so far anyway the government has  
7 shown an intentional misapplication of the funds of CASI.

8 Now, if you are talking about the grant funds, that's  
9 another matter, you may have something with respect to  
10 misapplication of grant funds. I don't know. I haven't heard  
11 all of the evidence.

12 For instance, with respect to the screen, CASI got the  
13 benefit of that screen. I don't think that can be considered a  
14 misapplication of funds. And if the government is proceeding  
15 in that way, unless they show that the corporation didn't  
16 benefit in any way by the purchase, I don't think it can be  
17 considered a misapplication of CASI's general funds.

18 So, I don't know what the rest of the evidence is, but  
19 I'd like to have a memorandum really by Monday morning  
20 delineating, if you will, how you are going to go, because I  
21 have to charge the jury. This is a very dicey situation if you  
22 read cases in this area, because you have to have knowing  
23 intent to misapply the funds, and it's virtually the same as  
24 conversion. And I think the leading case is Morisette.

25 But you ought to have something by Monday to show that

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1 I shouldn't throw this case out.

2 By the way, one of the defense exhibits for  
3 identification was left here on the bench, FFF. Maybe it's  
4 four Fs or three Fs. All right. Well, let me get this juror  
5 in. Robert, can you ask Ms. Hull to come in.

6 How much longer do you think you are going to be with  
7 Ms. Riley?

8 MR. RUBINSTEIN: Possibly most of the morning, your  
9 Honor.

10 (Juror present)

11 THE COURT: Good morning, Ms. Hull. You said you  
12 wanted to talk to me about your doctor's situation.

13 JUROR: Actually for a couple of years I have been  
14 dealing with several problems, and I have some brain lesions  
15 that they're trying to diagnose whether it's MS or some other  
16 problem going on. And then after I sent my reply back to the  
17 jury pool I got a result from a mammogram that I have  
18 calcifications in one breast requiring biopsy. So I'm in the  
19 process now of getting some specialist to look at that.

20 But this brain thing and the vestibular weakness is  
21 causing me to be extremely tired. I get really exhausted, and  
22 I felt yesterday I like zoned out almost like if I'm falling  
23 asleep or something during the process of witness examination.

24 THE COURT: I didn't notice it.

25 JUROR: You didn't? I was stunned.

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1 THE COURT: I may have been carrying on.

2 JUROR: There are just those issues going on, and I  
3 feel very feel good about the process, but I don't know if I  
4 can fulfill this. If I get an appointment to get the biopsy  
5 done, I will have to get it taken care of.

6 THE COURT: Well, if you have to leave for the biopsy,  
7 we will accommodate you.

8 JUROR: So, you don't see me kind of spacing out over  
9 here or anything? Because I'm trying to pay attention, but  
10 it's --

11 THE COURT: I think if you know you are going to be  
12 excused if the biopsy appointment is made during the trial,  
13 that you will be excused --

14 JUROR: OK, I will try my best to hang in there.

15 THE COURT: -- maybe you will have an easier mind.

16 MR. RUBINSTEIN: Sounds good to me, your Honor.

17 MR. KWOK: To the government as well.

18 THE COURT: All right. Thank you for being so frank  
19 and bringing it to our attention. And if you need a break,  
20 just raise your hand and you can have a break.

21 JUROR: I appreciate it, your Honor.

22 (Juror not present)

23 MR. RUBINSTEIN: We're short one defendant, your  
24 Honor. I didn't pick him up this morning, because he promised  
25 me he would be on time. I do want to say something about

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1 sleeping jurors. I was on a jury, and the two hardest things  
2 was staying awake -- these seats are so comfortable you have no  
3 idea.

4 THE COURT: Are you sure it wasn't the judge?

5 MR. RUBINSTEIN: It wasn't the judge.

6 THE COURT: Sometimes it's the attorneys.

7 MR. RUBINSTEIN: It could have been. That could have  
8 been.

9 Judge, can I make the call to my client?

10 THE COURT: Sure.

11 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. Thank  
3 you for being so prompt. All right, your next witness.

4 You're recalling Ms. Riley?

5 MR. KWOK: Yes, your Honor.

6 BELINDA RILEY, resumed.

7 THE COURT: You are reminded you are still under oath.

8 THE WITNESS: Yes.

9 THE COURT: And the jury is reminded I have to do that  
10 as a matter of court procedure. OK, thank you. Continue your  
11 cross.

12 MR. RUBINSTEIN: Thank you, your Honor.

13 CROSS EXAMINATION (Continued)

14 BY MR. RUBINSTEIN:

15 Q. Ms. Riley, I believe when we suspended your testimony you  
16 were looking for a record to refresh your recollection as to  
17 Mr. Gurfein's salary.

18 A. I was looking for the record -- I thought I was looking for  
19 the record for the grant, for the 75 percent, to show the  
20 multiplication to determine the allowable portion of his  
21 salary. Because the record you had had a hundred thousand  
22 times 75 percent equaled a hundred thousand, and there was a  
23 mathematical error. That should have said -- well, I think the  
24 one I found said 133 times 75 percent was a hundred thousand,  
25 which I didn't check, but it was to show that there was a

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Riley - cross

1 mathematical error on that document.

2 Q. Mathematical error on what document?

3 A. The budget document that was showing 100,000 times 75 is a  
4 100,000. Because 100,000 times 75 percent would be 75,000 not  
5 100,000.

6 Q. Well, would \$133,333, compute 75 percent to that, would  
7 that compute to 100,000?

8 A. I'm not sure. I was just trying to show that it was  
9 incorrect for that, for the 100,000, that it wasn't -- it  
10 should be a mathematical correct number. I didn't check the  
11 other document.

12 Q. Well, are you aware that the budget was amended in this  
13 case?

14 A. The budget was amended to show -- yes, the budget was  
15 amended, but it didn't have -- but the amendment 2 didn't have  
16 that particular attachment on it.

17 Q. Well, I show you what's been marked as Defendant's Exhibit  
18 H, which is a portion of Government Exhibit 33. Do you have  
19 Exhibit 33?

20 THE COURT: For identification?

21 Q. Yeah, for identification, your Honor?

22 MR. RUBINSTEIN: Yeah, for identification, your Honor.

23 (Defendant present)

24 Q. Do you recognize that document that is part of Exhibit 33  
25 that's in evidence?

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8667KAR1

Riley - cross

1 A. Yes.

2 Q. In fact, in the revised budget for the first year 2001 to  
3 2002 Mr. Gurfein's salary as project manager was raised to  
4 \$133,333, and 75 percent of that was listed as the cost to the  
5 project, \$100,000, correct?

6 A. Correct. So, if Mr. Gurfein was actually paid \$133,000,  
7 then the 75 percent would be applied to the amount that he was  
8 actually paid versus the amount that was budgeted. He would be  
9 allowed up to \$100,000 if that was 75 percent of the amount he  
10 was actually paid.

11 Q. So, in fact your calculation of deducting part of  
12 Mr. Gurfein's salary in the amount of \$25,000 was incorrect.

13 A. On the books and records provided by Mel, Mr. Gurfein's net  
14 pay was \$100,000 times 75 percent, which would be 75,000. And  
15 the withholding portion was separated into the fringe benefits  
16 section, and so that portion of the gross pay is shown as an  
17 adjustment in the fringe benefit section.

18 Q. When you say Mel, you mean Mr. Spitz, correct?

19 A. Mr. Spitz.

20 Q. But you didn't meet him until the latter part of 2003,  
21 right?

22 A. Right. And the December 2003 report is based on his books  
23 and records provided by Mr. Spitz.

24 Q. Didn't you tell us yesterday that you relied upon the books  
25 and records that you received from CASI and Ms. Hayes?

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Riley - cross

1 A. For the June 2003 report, the short report, I relied on the  
2 records that were submitted in June.

3 For the December report I relied on the books and  
4 records that were submitted by Mr. Spitz in December.

5 On some of the things I might have looked back to see,  
6 if I needed additional clarification, how they were booked,  
7 because the check registers provided by the June 2003 records  
8 were -- you know, I didn't question whether Dr. Karron's books  
9 paid the person that these checks were written to; it was just  
10 the allocation of the cost between the budget categories.

11 Q. Are you saying that the reports that Mr. Spitz presented to  
12 you were different than the financial reports that you had  
13 previously received from CASI?

14 A. Certain of the budget categories were different. The  
15 personnel categories should have been similar.

16 Q. Well, was it?

17 A. I didn't reconcile between the two sets of books. I used  
18 the ones submitted by Mr. Spitz December 2003 for that report.  
19 The cost claimed on the December 2003 report reconciles back to  
20 the Mel Spitz books.

21 Q. But the bottom line is now that you looked at Defendant's  
22 Exhibit H for identification, which is actually part of  
23 Government Exhibit 33, taking that into account, then it was  
24 appropriate to pay Mr. Gurfein \$100,000, correct?

25 A. No, it was appropriate to pay Mr. -- it was appropriate for

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Riley - cross

1 the NIST grant to -- well, based on this document, if  
2 Mr. Gurfein actually worked 75 percent of his time for the NIST  
3 grant, it would be appropriate to pay him 75 percent of his  
4 salary as allowable cost.

5 THE COURT: Attributable to the NIST grant.

6 THE WITNESS: Attributable to the grant. If he spent  
7 75 percent of his time working on the grant, with allowable  
8 things for the grant, then he would be entitled to -- the grant  
9 would reimburse for up to 75 percent of his salary if he spent  
10 that much time working.

11 If he only spent 50 percent of his time on allowable  
12 grant activities, then even though the budget would allow 75  
13 percent, he would have actually only spent 50 percent, so he  
14 should only be reimbursed 50 percent of the time.

15 Q. But in your findings you found that he worked 75 percent of  
16 the time and, therefore, you attributed a \$25,000 reduction in  
17 allowable expenses, correct?

18 A. My audit allows for 75 percent of his time.

19 Q. Which reduced his salary from \$133,333 to \$75,000, correct,  
20 according to your calculations?

21 A. No. This would be the gross salary. The 133 should be the  
22 gross salary, but in my calculations the records provided in  
23 December 2003 had divided the salary into net salary, and the  
24 withholdings were included as part of fringe benefits, and so  
25 that computation is kind of in two parts. Part of it shows up

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Riley - cross

1 in the fringe benefits section of the report, and part of it  
2 shows up in the personnel section of the report.

3 Q. But the total comes out to \$25,000, correct?

4 A. The total adjustment comes out to -- can I have a copy of  
5 my December report?

6 Q. Why don't you take a look at I believe it's Exhibit 62.

7 THE COURT: She hasn't got copies of her reports in  
8 front of her?

9 All the documents she had on direct, not just one.

10 By the way, H is not in evidence. Defendant's H is  
11 for identification. You have not offered it in evidence,  
12 Mr. Rubinstein.

13 MR. RUBINSTEIN: I think it's part of --

14 THE COURT: I know, but --

15 MR. RUBINSTEIN: All right. We will offer H into  
16 evidence, your Honor.

17 THE COURT: You say that, but the government has to  
18 look at it, makes sure it is part of it, and I have to look at  
19 it.

20 MR. RUBINSTEIN: OK. I gave a copy to the government,  
21 your Honor, and I would offer defendant's H into evidence.

22 THE COURT: Any objection?

23 MR. KWOK: No objection.

24 THE COURT: Defendant's H is in evidence.

25 (Defendant's Exhibit H received in evidence)

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Riley - cross

1 A. OK. For the chief operating officer \$25,000 is questioned,  
2 plus a percentage on page 4 of 8 where it says \$8,466 is  
3 questioned for payroll for the chief operating officer and  
4 chief technical officer's salary --

5 THE COURT: Just slow down.

6 A. OK. The additional amount questioned for the gross salary  
7 is included in the \$8,466.

8 Q. Now that you have reviewed Defendant's H, Government  
9 Exhibit 33 -- withdrawn.

10 Now, you are an independent auditor for the office of  
11 the inspector general, correct?

12 A. Yes.

13 Q. It's your responsibility to make sure the numbers that you  
14 submit are correct, right?

15 A. Yes.

16 Q. And you have access, do you not, to all the records of the  
17 NIST ATP grant, correct?

18 A. Yes.

19 Q. And you had access to what's in evidence as Government's  
20 33, correct?

21 A. Yes.

22 Q. And by looking at Government's 33 in defendant's H, which  
23 is part of it, is it fair to say that it was an error on your  
24 part to deduct \$25,000 as allowable expenses on behalf of  
25 Mr. Gurfein the chief operating officer?

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Riley - cross

1 A. No.

2 Q. And on what basis do you say that?

3 A. This adjustment is based on a salary paid to Mr. Gurfein,  
4 75 percent of the actual salary paid.

5 Q. What was the actual salary paid?

6 A. I think it was around 125,000.

7 Q. Isn't it according to the document that I showed you  
8 \$133 --

9 THE COURT: Let's not have what you think. Go to your  
10 documents and tell us.

11 MR. RUBINSTEIN: She has Exhibit H there in front of  
12 her, your Honor.

13 THE COURT: I understand.

14 MR. RUBINSTEIN: Can you look at Exhibit H?

15 THE COURT: You asked her. She said it was actual  
16 salary paid. This is a conclusory document. She has conducted  
17 an audit; she did the bank records; she did the other records.  
18 She can look at those to determine what the actual salary paid  
19 was.

20 MR. RUBINSTEIN: Absolutely.

21 Q. What was the actual salary paid to Mr. Gurfein, ma'am?

22 A. The actual salary was approximately \$122,000.

23 Q. And what's 25 percent of \$122,000?

24 A. That was the gross salary. The net salary was \$100,000. 75  
25 percent of the \$100,000 is the \$25,000 adjustment.

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Riley - cross

1 Q. Isn't it 25 percent of the gross, ma'am, that you took off?

2 A. The additional portion, the gross, is in the fringe  
3 benefits number of the \$8,466.

4 Q. Isn't it a fact that your audit found that Mr. Gurfein was  
5 to be paid \$100,000, ma'am? That was the finding of your audit  
6 that you just said you got from Mr. Spitz, that his gross  
7 salary was \$100,000 --

8 A. His net salary was \$100,000. The remainder was included in  
9 the fringe benefit break-down by Mr. Spitz.

10 Q. Fringe benefits are considered part of salary?

11 A. The withholdings were accounted for in the books that way.

12 Q. Well, withholding is a fringe benefit, correct?

13 A. The costs here should be the -- the annual salary should  
14 include the withholdings as part of it in the budget.

15 THE COURT: So it's withholding, not fringe benefits  
16 that accounts for the difference?

17 THE WITNESS: Yes, withholdings. But in the books and  
18 records provided, the withholdings were included as a fringe  
19 benefit number, and so in my audit adjustment I included them  
20 where they were included for the books I was provided.

21 Q. But when you talk about fringe benefits like health  
22 insurance and vacation, that's not included in the person's  
23 salary, is it?

24 A. In the break-down that I was provided -- I included these  
25 numbers where Mr. Spitz had included the accrual for the cost.

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Riley - cross

1 Q. Ma'am, you are an auditor, correct?

2 A. Yes.

3 Q. You are familiar with accounting principles?

4 A. Yes. Withholdings would not be part of the fringe  
5 benefits. But in the audit --

6 THE COURT: But they were in the books, is that what  
7 you're saying?

8 THE WITNESS: They were in the books, and so I  
9 adjusted where things were in the books.

10 Q. It's your take-home pay plus your withholding that makes up  
11 for your salary, correct?

12 A. Correct.

13 Q. I mean if I get \$1,000 a week salary and I'm in the 28  
14 percent bracket, on the books it shows that I had \$1,000 that I  
15 had to pay taxes on, correct?

16 A. Can you repeat that?

17 Q. Your taxes are withheld if you are a salaried employee,  
18 correct?

19 A. Correct.

20 Q. So that if you make \$1,000 a week and you are in let's say  
21 the 30 percent bracket, you get a net check of \$700 a week.

22 A. Correct.

23 Q. Right?

24 A. Correct.

25 Q. And those monies that with withheld are properly in fringe

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Riley - cross

1 benefits, correct?

2 A. The money for withholding are part of your gross salary and  
3 are often accounted for in the fringe benefits section.

4 THE COURT: But they're not part of your --

5 He asked you about fringe benefits. Are withholding  
6 taxes deducted, from an auditing point of view, proper as  
7 fringe benefits?

8 THE WITNESS: As an auditing point of view we normally  
9 adjust them where they were claimed by the person doing the  
10 books. In this instance they were claimed under fringe  
11 benefits, and so we adjusted them under what they were claimed.

12 We didn't adjust personnel cost to include the fringe  
13 benefits because they -- it was actually considered harder to  
14 explain that way, but ...

15 Q. Do you have a schedule of the actual checks that were  
16 received by Mr. Gurfein, ma'am?

17 A. Yes.

18 Q. Where is that schedule?

19 A. My database.

20 THE COURT: Exhibit?

21 MR. KWOK: I believe it's Government Exhibit 110, your  
22 Honor.

23 THE COURT: Exhibit 100, is that what you're referring  
24 to, Ms. Riley?

25 DEPUTY COURT CLERK: I think they said 110.

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8667KAR1

Riley - cross

1 THE COURT: 110? And 111?

2 MR. RUBINSTEIN: And can you tell us what page?

3 THE COURT: Ms. Riley, you have a way when I ask you  
4 for a yes or no answer, instead of giving me a yes or no  
5 answer, you give me an explanation.

6 THE WITNESS: OK.

7 THE COURT: Same goes -- give a yes or no answer.  
8 Then if they ask for an explanation, give the explanation. But  
9 when you answer it that way, no one knows whether you are  
10 answering yes or no sometimes. Maybe they don't understand  
11 you.

12 THE WITNESS: OK.

13 THE COURT: OK. Now, let's find the pages that have  
14 Mr. Gurfein's salary. Can you help us there?

15 MR. KWOK: Can we direct the witness to a page?

16 THE COURT: Yes.

17 MR. RUBINSTEIN: Please.

18 MR. KWOK: Could I direct your attention to page 36 of  
19 44 in Government Exhibit 110.

20 THE WITNESS: OK.

21 Q. Are you looking at that page, ma'am?

22 A. I do.

23 Q. And you have a total of the net amount of Mr. Gurfein's  
24 salary?

25 A. That shows that --

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8667KAR1

Riley - cross

1 Q. Do you see the top of the page, ma'am?

2 A. Sorry. What page was that?

3 Q. Pardon?

4 A. What page?

5 Q. It's 36 of 44 in Exhibit -- ma'am, could you look at the  
6 top of that page, page 36 of 44.

7 A. Yes.

8 Q. And is that a schedule of Mr. Gurfein's net, the checks  
9 that were actually written to Mr. Gurfein?

10 A. No, it was a check that I had -- the database I had  
11 created, so I had thought that the net checks should be there.

12 Q. Pardon?

13 A. It's the database that I had entered all the checks from  
14 Dr. Karron.

15 Q. So, that's not a Spitz document.

16 A. No, that's not Spitz documents.

17 Do we have Spitz?

18 Q. Well, from the checks that you saw from CASI that you put  
19 in this exhibit that's in evidence, what is the total amount of  
20 net pay received by Gurfein?

21 A. \$70,000 in checks written.

22 Q. Not 100,000, right?

23 A. No.

24 Q. You just testified under oath that it was 100,000 that he  
25 received in net salary, correct?

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8667KAR1

Riley - cross

1 A. According to the records provided by Mel Spitz. So, there  
2 might have been some adjusted journal entries.

3 Q. But not according to the records you provided.

4 A. Well, they were just based on the checks written.

5 Q. Yours is based on the actual checks.

6 A. The actual checks written to him.

7 Q. And you have those checks, do you not, or copies of those  
8 checks?

9 A. Yes, I do.

10 Q. I mean you have access to any bank statement and copies of  
11 any checks that were written, cashed on any account in this  
12 case, correct?

13 A. Written on --

14 MR. KWOK: Objection.

15 THE COURT: Objection overruled.

16 Q. You have authority to subpoena -- if you didn't get the  
17 actual records from CASI, you can subpoena a bank, Chase Bank,  
18 right, to get the records that they have, right?

19 A. We're talking about bank records for CASI?

20 Q. Talking about the checks --

21 A. The checks for CASI.

22 Q. The checks of CASI.

23 A. Yes.

24 Q. And did you do a bank reconciliation on the checks that  
25 were drawn against the four CASI accounts that you mentioned

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8667KAR1

Riley - cross

1 yesterday?

2 A. Yes.

3 Q. And is it fair to say that the schedule that you have here  
4 on page 36 of 44 of Exhibit 110 was computed on the basis of  
5 your analysis of those checks?

6 A. Yes.

7 Q. So, now do you concede that your number before of \$100,000  
8 in net pay to Mr. Gurfein was inaccurate?

9 THE COURT: Net pay?

10 MR. RUBINSTEIN: Yeah, that's what she said, the  
11 100,000 was the net pay.

12 THE COURT: Did you say that?

13 MR. RUBINSTEIN: Or something like 122,000.

14 THE WITNESS: Net pay, yes, based on Mr. Spitz's  
15 records.

16 THE COURT: Well, what was the net pay that you put in  
17 your books, in your audit?

18 THE WITNESS: From my audit the net pay was \$100,000.

19 THE COURT: But yet your audit says that he only got  
20 70,000 on page 36 of 44.

21 THE WITNESS: It says that 25 percent of the --

22 THE COURT: Well, 36 of 44 says what?

23 THE WITNESS: 36 of 44 says 70,000 was net pay.

24 THE COURT: Right.

25 THE WITNESS: And that came from the actual deposit.

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8667KAR1

Riley - cross

1 THE COURT: Right. And your audit report says net pay  
2 was 100,000?

3 THE WITNESS: Well, they are from different sources.  
4 The audit report is from Mr. Spitz's record, so it may have  
5 adjusting journal entries.

6 THE COURT: I don't follow. Why would you use  
7 Mr. Spitz's record when you have your own record of what it is?

8 THE WITNESS: Because I didn't create them until  
9 later, until after the audit was done.

10 THE COURT: You didn't create what?

11 THE WITNESS: This record, the 36 of 44, until after  
12 the audit was done. I did not analyze the canceled checks  
13 until asked to by investigations.

14 THE COURT: All right.

15 THE WITNESS: So they were done at different times.

16 THE COURT: So, it's your testimony that based on your  
17 understanding of Mr. Spitz's records there was a \$25,000  
18 overpayment to Mr. Gurfein.

19 THE WITNESS: Yes.

20 THE COURT: But when you actually checked the records  
21 later after the audit was done, and you found out in fact it  
22 wasn't 100,000.

23 THE WITNESS: Correct.

24 THE COURT: So, the 100,000 determination by you was  
25 incorrect --

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Riley - cross

1 THE WITNESS: Yes.

2 THE COURT: -- based on the records.

3 THE WITNESS: Based on the canceled checks, yes.

4 THE COURT: All right.

5 Q. So, is it fair to say today, June 6, 2008, that the  
6 disallowance of the \$25,000 in salary of Mr. Gurfein was an  
7 error in the calculations?

8 MR. KWOK: Objection.

9 THE COURT: Objection sustained. It's not fair to say  
10 that. It was based on an incorrect conclusion possibly.

11 MR. RUBINSTEIN: OK, incorrect conclusion.

12 THE COURT: But based on the records -- but correct  
13 under the records that she had received from Mr. Spitzer or  
14 whatever his name is.

15 Q. That's an acceptable auditing technique, ma'am, to use the  
16 representative of the taxpayer, their records?

17 A. Yes.

18 Q. That's an acceptable auditing principle?

19 A. Yes, we use their records.

20 Q. Is that an audit? There are principles of auditing, are  
21 there not, ma'am?

22 A. Yes.

23 Q. And is it your testimony that you do not do any independent  
24 evaluation of records submitted to you?

25 A. I sampled certain transactions in Mr. Spitz's books.

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8667KAR1

Riley - cross

1           THE COURT: Is an audit a review of the records of the  
2 company you're reviewing on according to what they say, or does  
3 an auditor have to go back to the underlying records to  
4 determine what the truth is?

5           THE WITNESS: We test the records that they provide  
6 us, and if we think that they do a fair and accurate  
7 representation of the expenses, then we start our audit using  
8 their records and make adjustments.

9           So, in this case I would have looked at the records  
10 provided from Mr. Spitz, determined that NIST only agreed to  
11 pay 75 percent of what Mr. Gurfein's salary was, and so my  
12 audit adjustment would be the books showed he was paid 100,000  
13 he was only entitled to ATP reimbursement of 75 percent of  
14 that, so CASI would have paid 25,000 to Mr. Gurfein and NIST  
15 would have paid the 75,000 to Mr. Gurfein based on Mr. Spitz's  
16 records.

17 Q. And Spitz's records show that the gross, according to you,  
18 was 100,000, correct?

19 A. The net salary was 100,000.

20 Q. Do you have those records here?

21 A. Mr. Spitz's records?

22 Q. Yes, that you say that Spitz said that the net salary was  
23 \$100,000.

24 A. Yes.

25           THE COURT: Do you have the records here?

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8667KAR1

Riley - cross

1 THE WITNESS: I have computer copies.

2 THE COURT: A computer copy of Mr. Spitz's records?

3 THE WITNESS: Yes.

4 THE COURT: But not in front of you.

5 THE WITNESS: Not in front of me.

6 Q. And you didn't use Spitz's figures for Exhibit 110,  
7 correct?

8 THE COURT: For exhibit --

9 MR. RUBINSTEIN: 110, the one she is talking about.

10 THE COURT: She said that 110 was created after the  
11 December audit.

12 MR. RUBINSTEIN: But if she --

13 Q. If you didn't use these figures in 110 for your audit, how  
14 are they relevant to this case?

15 A. Since they were the --

16 THE COURT: Well, that's not a good question for her  
17 to answer. That's not a question for her.

18 MR. RUBINSTEIN: All right. Well, I'm not going to --

19 THE COURT: You can argue that on summation.

20 MR. RUBINSTEIN: I have gone far enough on this issue.

21 Q. The bottom line, ma'am, is that between Mr. Gurfein and Dr.  
22 Karron, you disallowed a total of \$71,550, right?

23 THE COURT: Based on Mr. Spitz's records. Is that  
24 right?

25 THE WITNESS: Yes, from Mr. Spitz and Dr. Karron,

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Riley - cross

1 yes -- I mean for Gurfein and Dr. Karron.

2 Q. And Spitz' records indicated that Dr. Karron wasn't  
3 entitled to a hundred percent of his \$175,000 salary?

4 A. The NIST budget allows that a salary can be up to. It's  
5 not in stone the allocations of time worked. These are  
6 estimates of percentage of projected time on project.

7 Q. The budget permitted \$175,000 for Dr. Karron, correct?

8 A. The budget would have permitted a hundred percent of the  
9 time for Dr. Karron if he spent a hundred percent of his time  
10 working on the ATP project.

11 Q. How many hours a week is he supposed to work on the ATP  
12 project to justify his \$175,000 salary?

13 A. He is a salaried employee, so it doesn't amount to hours.  
14 It is the percentage of time worked. So, if he works --

15 THE COURT: Not ifs. What were you told by  
16 Mr. Spitz's records?

17 THE WITNESS: OK.

18 THE COURT: What did Mr. Spitz tell you? What did  
19 Mr. Spitz's records -- what did he tell you?

20 THE WITNESS: Mr. Spitz's records would have shown a  
21 hundred percent of his time. Well, if Spitz's records -- just  
22 had total salary.

23 Q. Pardon?

24 A. Mr. Spitz's records showed net salary under the personnel  
25 section.

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8667KAR1

Riley - cross

1 Q. So, you relied upon Mr. Spitz's records for Gurfein, but  
2 you didn't rely upon Mr. Spitz's records for Dr. Karron?

3 A. No, the -- Dr. Karron is the CEO of CASI and is also caring  
4 about the project. Mr. Gurfein's responsibilities included  
5 fundraising and project managing, strategic planning. Dr.  
6 Karron would have made -- as owner of CASI and interested in  
7 the project -- would have had discussions with Mr. Gurfein  
8 concerning those issues, and those issues, since they are not  
9 allowable costs, the time he would have spent discussing those  
10 kinds of issues would not be allowable charges to the ATP  
11 project.

12 So, he didn't really -- he really wasn't spending a  
13 hundred percent of his time, and so as auditors, based on  
14 interviews --

15 THE COURT: How did you determine he wasn't spending a  
16 hundred percent of his time?

17 THE WITNESS: Based on --

18 THE COURT: For this audit report.

19 THE WITNESS: Based on -- just on what -- that it's a  
20 company, I guess professional judgment.

21 THE COURT: What?

22 THE WITNESS: Professional judgment. Knowing the type  
23 of business, knowing their requirements, that a hundred percent  
24 of the time for the CEO is not on just project time.

25 THE COURT: It wasn't based on anything that Mr. Spitz

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8667KAR1

Riley - cross

1 or Dr. Karron told you or anything of that sort? It's just  
2 professional judgment.

3 THE WITNESS: Right. And I had asked Dr. Karron about  
4 things, various employees, and, you know.

5 THE COURT: And what?

6 THE WITNESS: And observed things that people did.

7 THE COURT: You mean your observations during the  
8 audit?

9 THE WITNESS: Yeah, and things discussed during the  
10 audit.

11 Q. So, it's your testimony that if I'm a salaried -- if a  
12 person is a salaried employee, and they work 80 hours a week on  
13 one project, and they spend two hours of that 80 hours on  
14 non-direct activities, you are going to deduct part of their  
15 salary as an allowable expense?

16 A. As a NIST-reimbursable expense for -- they're being  
17 reimbursed for -- yes.

18 If they're not working on the NIST project, and their  
19 duties aren't related to the NIST project, then only the  
20 portion that's related to the project cost is allowable.

21 Q. Well, what if they had two jobs, they had a NIST job and at  
22 night they taught at some university, and now they only work 40  
23 hours a week?

24 MR. KWOK: Objection.

25 THE COURT: Objection sustained.

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8667KAR1

Riley - cross

1 Q. Is it fair to say that you are not the last word on what's  
2 allowable and what's not allowable in the OIG's office?

3 A. During resolution of the audit?

4 Q. In the whole process that a company can dispute your  
5 interpretations, correct?

6 A. Correct, it goes through a resolution process.

7 Q. And are you part of that resolution process?

8 A. Yes.

9 Q. Do you make the final decision at that resolution process?

10 A. The grants office makes the final decision.

11 Q. The grants office?

12 A. Um-hum.

13 Q. The grants office of what?

14 A. NIST ATP.

15 Q. So they have a right in the final resolution to approve any  
16 of these expenses, correct?

17 A. Yes, they do.

18 Q. Now, you talked about fringe benefits. Did you make any  
19 determination in your audit as to other fringe benefits other  
20 than the payroll tax, tax withholding? Did you make any  
21 determinations as to any other fringe benefits, whether they  
22 were allowable or not?

23 A. Yes.

24 Q. Because actually you are making a determination in your  
25 analysis of what is allowed, correct?

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8667KAR1

Riley - cross

1 A. Yes.

2 Q. As distinguished from what is allowable.

3 A. I make the determination for what is allowable.

4 Q. Well, did you review any materials to determine what was an  
5 appropriate fringe benefit for the CASI organization?

6 A. What is your -- I don't understand that question.

7 Q. Did you review anything to determine in your mind what  
8 fringe benefits would be, like let's say medical, what medical  
9 fringe benefits should be allowable?

10 A. Yes.

11 Q. And what did you review?

12 A. He had some kind of plan document I think from '96 that  
13 didn't mention these kinds of benefits.

14 THE COURT: What did you say?

15 THE WITNESS: He had a document that didn't mention --  
16 I don't think it mentioned fringe benefits or mentioned all of  
17 these.

18 THE COURT: Sorry. What? I can't hear you.

19 THE WITNESS: He had a plan document or an office  
20 policy document.

21 THE COURT: Which was it?

22 THE WITNESS: Office policy. That's the only document  
23 that I reviewed that mentioned -- that was in effect during the  
24 period of the grant.

25 THE COURT: That's what you were guided by here?

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8667KAR1

Riley - cross

1 THE WITNESS: And I reviewed -- well, I reviewed the  
2 expense records, the ledger records.

3 THE COURT: Provided to you by?

4 THE WITNESS: Mel Spitz, Mr. Spitz.

5 THE COURT: Go ahead. What else?

6 THE WITNESS: Everything else was the log.

7 THE COURT: What? The log?

8 THE WITNESS: Yeah, the criteria that was provided  
9 by --

10 THE COURT: What criteria?

11 Q. What criteria?

12 A. Well, ATP guidance or whatever criteria would have to do  
13 with fringe benefits.

14 Q. Isn't the company's policies, even if they're not written,  
15 aren't they to be considered in making that determination what  
16 the practice is of that organization?

17 A. It didn't mention those kinds of benefits in the policy  
18 that I saw.

19 THE COURT: The office policy.

20 THE WITNESS: In the office policy.

21 Q. That's not the question.

22 A. OK.

23 Q. You say you saw a document from 1996, correct?

24 A. It was an old document. I'm not sure. I don't recall the  
25 exact year but it was --

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8667KAR1

Riley - cross

1 Q. Did you ask --

2 THE COURT: This document, what is it? What are we  
3 talking about? Are you talking about the office policy manual?  
4 Is that what you mean by the document, Mr. Rubinstein?

5 MR. RUBINSTEIN: That's what she indicated.

6 THE COURT: All right. But let's be sure we are  
7 talking about what we're talking about.

8 Q. The document that you say that you saw, did you discuss  
9 whether or not that was still in effect in the year 2003 when  
10 you did the audit?

11 A. They were revising it in 2003.

12 Q. And did they advise you they were revising it?

13 A. Yes, that they were revising it.

14 THE COURT: And who gave you the document?

15 THE WITNESS: I don't know if I have a copy. I don't  
16 know that they had finished -- I don't think I got a copy. I'm  
17 not sure I have a copy of that document.

18 THE COURT: Which document?

19 THE WITNESS: The revised document.

20 THE COURT: I'm not asking you about the revised  
21 document. Who handed you the document that you did see?

22 THE WITNESS: I don't recall. I think I got that one  
23 in June, but I don't recall specifically.

24 THE COURT: When? From whom is what I asked, not  
25 when.

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8667KAR1

Riley - cross

1 THE WITNESS: I don't know whom.

2 THE COURT: I asked from whom.

3 THE WITNESS: I don't remember.

4 THE COURT: Listen to the question before you answer,  
5 and try and give a yes or no answer, please.

6 THE WITNESS: I don't remember whom.

7 THE COURT: OK.

8 Q. Now, you were informed that they were working on a revised  
9 manual, is that correct?

10 A. Yes.

11 Q. And were you advised that the revised manual would have the  
12 fringe benefits that were in place in CASI from before the  
13 grant?

14 THE COURT: Sorry?

15 Q. That the revised --

16 THE COURT: Question withdrawn. Start over again,  
17 Mr. Rubinstein.

18 Q. You had discussions that they were working on a revised  
19 manual, correct, including fringe benefits?

20 A. Yes, I knew that they were revising their manual.

21 Q. And did you question as to what policies had been in effect  
22 prior to the ATP grant?

23 THE COURT: Forget about the revised manual now. He  
24 is asking you did you ask what policies were in effect prior to  
25 the ATP grant. Did you ask that question?

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Riley - cross

1 THE WITNESS: I don't recall.

2 Q. Is it a fact that under the auditing procedure you can  
3 inquire as to fringe benefits such as medical, as to what the  
4 company's policy was and what it had done previously?

5 A. That is one consideration.

6 THE COURT: Sorry. What?

7 THE WITNESS: Yes. Yes.

8 Q. And did you inquire of anyone -- well, did you inquire of  
9 Dr. Karron what the practice of CASI was prior to getting the  
10 ATP grant as to fringe benefits?

11 A. I don't recall.

12 Q. Well, let me show you what's been marked for identification  
13 as Defendant's L and ask you if you have ever seen that  
14 document before.

15 A. I don't recall seeing this document before.

16 Q. Now, did you review the contract of Mr. Gurfein when you  
17 were reviewing his salary?

18 A. Yes.

19 Q. And let me show you what's been marked for identification  
20 as Defendant's K.

21 THE COURT: 3505 what?

22 MR. RUBINSTEIN: It's in 3505. It doesn't have a  
23 letter but it's before C. 3505, I guess it must be in the B  
24 part.

25 Q. Is that a document that you reviewed which was a CASI

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Riley - cross

1 document, ma'am?

2 A. Yes.

3 Q. As a matter of fact, you had a copy of that, did you not?

4 A. Yes.

5 Q. As a matter of fact, you turned your copy over to the  
6 prosecution yesterday, correct?

7 A. Yes.

8 MR. RUBINSTEIN: We offer Defendant's K into evidence.

9 MR. KWOK: No objection.

10 THE COURT: Defendant's K is admitted into evidence.  
11 Can I see a copy?

12 MR. RUBINSTEIN: I gave you one, Judge.

13 (Defendant's Exhibit K received in evidence)

14 THE COURT: This is an employment agreement --

15 MR. RUBINSTEIN: Yes.

16 THE COURT: -- between Mr. Gurfein and Computer Aided  
17 Surgery, dated as of October 1, 2001, signed on December 26,  
18 2001.

19 Q. And this was provided to you as part of the audit, correct?

20 A. Yes.

21 Q. To show -- well, I will withdraw that. This contract  
22 provides for fringe benefits, does it not?

23 A. Sorry. What?

24 Q. This document provides for fringe benefits?

25 A. Yes.

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8667KAR1

Riley - cross

1 Q. And will you read to the jury what the fringe benefits  
2 provided by CASI were.

3 A. On page 3, the executive will be entitled to participate in  
4 all benefit plans or programs of the company currently in  
5 existence or to be established, including medical, dental, life  
6 insurance, retirement, pensions, vacations, sick leave and  
7 holidays.

8 (Continued on next page)

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866zkar2

Riley - cross

1 BY MR. RUBINSTEIN:

2 Q. Thank you. Now, you also -- you also disallowed certain  
3 salary of other people, is that correct?

4 A. Yes.

5 Q. And you disallowed salary of Abe Karron?

6 A. Yes. Well --

7 THE COURT: I'm sorry, are you changing your --

8 A. Abe didn't have salary.

9 THE COURT: She say Abe didn't have a salary.

10 Q. Did Abe receive any monies from CASI?

11 A. For the projection, projector.

12 THE COURT: For what?

13 THE WITNESS: He did, the projector and the screen.

14 He didn't have -- wasn't salaried.

15 THE COURT: If you answer first yes or no, that helps.

16 THE WITNESS: Oh, sorry.

17 Q. And that was an allowable expense, correct?

18 A. I'm sorry, what?

19 Q. That was allowable?

20 A. What was allowable?

21 Q. The money paid to Abe Karron?

22 THE COURT: What did you say?

23 THE WITNESS: What money paid to Abe Karron?

24 Q. The thousand dollars and change?

25 A. I think that was questioned under equipment, maybe.

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866zkar2

Riley - cross

1 Q. Did you allow or disallow that amount?

2 THE COURT: Were any of these allowed or disallowed or  
3 were they questioned, any of these expenses?

4 What was your role here? Were you disallowing or were  
5 you recommending or were you questioning; what were you doing?

6 THE WITNESS: We --

7 THE COURT: You.

8 THE WITNESS: Yes. We questioned, we questioned the  
9 cost and recommend that it be disallowed.

10 THE COURT: Okay.

11 Q. And you recommended in this report that over \$500,000 would  
12 be disallowed, correct?

13 A. Correct.

14 THE COURT: This is the December report?

15 MR. RUBINSTEIN: The audit was in December --  
16 actually, it was filed I believe in March of 2004.

17 Q. Is that correct, Ms. Riley?

18 A. Correct.

19 THE COURT: All right.

20 Q. Now, there was an employee Miss Winter?

21 A. Yes.

22 Q. And did you allow or disallow part of her salary?

23 A. Disallow.

24 Q. And how much of her salary was disallowed.

25 A. 25 percent, approximately.

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866zkar2

Riley - cross

1 Q. What basis was -- Ms. Winter was a bookkeeper at CASI  
2 correct?

3 A. Correct.

4 Q. And on what basis was 25 percent disallowed?

5 A. On the basis that she also kept the books for the business  
6 CASI, and so she, she worked on -- so NIST would reimburse her  
7 total salary.

8 THE COURT: I couldn't hear you.

9 THE WITNESS: NIST would only reimburse the portion of  
10 the time that she worked for NIST.

11 THE COURT: I see. And the rest was for the  
12 corporation?

13 THE WITNESS: Theory Corporation.

14 THE COURT: Theory?

15 THE WITNESS: Theory Corporation.

16 Q. Wasn't her job as a bookkeeper for CASI?

17 A. Yes.

18 Q. Weren't employee salaries included in the budget?

19 A. Only the portion of the time that would be attributable to  
20 NIST work would be reimbursed by the grant.

21 Q. But there was only one project going on at CASI, correct?

22 A. Correct, but --

23 Q. So 100 percent of her time was being spent on CASI-related  
24 items, correct, ATP related items?

25 A. No.

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866zkar2

Riley - cross

1 Q. You also -- she also had some fringe benefits, did she not?

2 A. Yes.

3 Q. What kinds of fringe benefits did she have?

4 A. Medical expense and child care.

5 Q. And you disallowed her child care, correct?

6 A. Correct.

7 Q. That was a fringe benefit of CASI, correct?

8 A. Correct.

9 Q. And you decided that --

10 THE COURT: Was it in the manual or not?

11 THE WITNESS: It was not in the manual. That was  
12 provided to me originally.

13 THE COURT: Were you given another one later?

14 THE WITNESS: Just the one that I was -- just the  
15 revised one I just received now.

16 THE COURT: You were, you were given that?

17 THE WITNESS: No, no. This is -- no, I wasn't given  
18 the revised manual.

19 THE COURT: You were given the revised manual?

20 THE WITNESS: No, I did not, did not receive the  
21 revised manual.

22 THE COURT: Then why did you answer yes?

23 THE WITNESS: I just got it -- I said yes, just now, I  
24 received the revised manual.

25 THE COURT: What?

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866zkar2

Riley - cross

1 THE WITNESS: Because I just got this revised manual,  
2 yes. Not the time of the audit.

3 THE COURT: I didn't --I'm asking you about what you  
4 did at the time you did it.

5 THE WITNESS: Yeah, I did not receive the revised  
6 manual at that time.

7 THE COURT: All right. So on the information you had,  
8 you decided to not allow child care?

9 THE WITNESS: Correct.

10 THE COURT: Okay.

11 Q. Did you discuss with anybody, with Dr. Karron, as to the  
12 fringe benefit policy related to child care for Miss Winter?

13 A. I don't recall.

14 THE COURT: That revised manual isn't in evidence, is  
15 it?

16 MR. RUBINSTEIN: No, your Honor.

17 THE COURT: You're relying on something that's not  
18 even in evidence yet.

19 THE WITNESS: Oh, okay.

20 THE COURT: All right.

21 THE WITNESS: All right.

22 THE COURT: Let's get it together.

23 THE WITNESS: Okay.

24 MR. RUBINSTEIN: Your Honor --

25 MR. KWOK: Objection.

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Riley - cross

1 THE COURT: Objection -- objection sustained. I don't  
2 know what, what you're objecting to. It may have been my  
3 remarks, so maybe.

4 MR. KWOK: No, I'm objecting to the --

5 THE COURT: I'll sustain it, I'll sustain that also.

6 MR. RUBINSTEIN: You want to strike your remarks, your  
7 Honor?

8 THE COURT: Well --

9 Q. Now, CASI wrote checks for rent, correct?

10 A. Correct.

11 Q. Now, rent is ordinarily not permitted as a direct cost,  
12 correct?

13 A. Correct.

14 Q. In a situation where the sole -- and the reason, is the  
15 reason for that because normally a business is conducting other  
16 businesses other than the grant project and, therefore, it's  
17 hard to attribute what portions would be applicable?

18 A. It's -- it would need to be in the budget.

19 Q. There's others -- there's a provision for others in the  
20 budget, correct?

21 A. Correct.

22 Q. And you could increase that category by up to 10 percent of  
23 the 800,000 in the first year, correct?

24 A. Correct.

25 Q. Now, but going with the -- so that is an issue that --

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1 actually whether something is an indirect or a direct cost is  
2 something that could be negotiated with the grant offices,  
3 right?

4 MR. KWOK: Objection.

5 Q. Well, in the audit resolution you could negotiate whether  
6 or not that would be a direct cost as opposed to an indirect  
7 cost?

8 A. Rent would be considered an indirect cost.

9 Q. Generally speaking, right; is that correct?

10 A. Correct.

11 Q. But the CFR that you're governed by says that you deal on a  
12 case-to-case basis?

13 A. Correct.

14 Q. Now, let's assume for these questions that the rent was, in  
15 fact, not allowable; it was in fact an indirect cost, okay.

16 Follow that?

17 A. Not allowable -- yes.

18 Q. I'm assuming that you're correct, okay?

19 A. I'm correct.

20 Q. The rent attributable to the ATP grant would start when?

21 MR. KWOK: Objection.

22 A. Start?

23 Q. Yeah, when would it start? If rent was paid --

24 A. If rent was allowable?

25 Q. No, no. If it was paid, it was an expense. It's not

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Riley - cross

1 allowable, it's an expense that's paid, but not allowable.

2 MR. KWOK: Objection.

3 Q. Let me ask you --

4 THE COURT: I don't understand the question.

5 Q. Let me ask you this, was there --

6 THE COURT: I don't understand the question. Reframe  
7 the question.

8 Q. Okay. When you started to audit CASI, did you ascertain  
9 what the financial condition of CASI was before the grant  
10 started in October of 2001?

11 A. Yes.

12 Q. And is it fair to say that CASI Corporation was in debt in  
13 excess of between 100 and \$200,000 at that time?

14 A. I don't know how much they were in debt.

15 Q. Well, in fact --

16 THE COURT: You don't know whether they were in debt?

17 THE WITNESS: They were in debt. I don't know the  
18 amount.

19 Q. And CASI, prior to the ATP grant, was in fact paying rent  
20 to Dr. Karron for use of that portion of the apartment at 300  
21 East 33rd Street?

22 THE COURT: Before the grant?

23 MR. RUBINSTEIN: Before the grant.

24 THE COURT: Is that your knowledge?

25 THE WITNESS: No. My knowledge is they took -- they

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Riley - cross

1 paid themselves nine months of back rent when they first got  
2 the check, CASI, paid, took --

3 Q. Go ahead.

4 A. The back -- they paid, they paid back rent with the first  
5 drawdown of NIST funds for nine months, \$18,000.

6 Q. And they listed, they listed what months the rent was for,  
7 correct?

8 A. Correct.

9 Q. I mean, there is a memo on each check, right?

10 A. Yes. Now there is.

11 Q. Pardon?

12 A. Yes.

13 Q. And the memo says what month that \$2,000 check was payment  
14 for?

15 A. Yes.

16 Q. Now, did you do any --

17 THE COURT: To whom was the check payable?

18 THE WITNESS: Dr. Karron.

19 THE COURT: What?

20 THE WITNESS: Dr. Karron.

21 Q. And if he received rent money, then he would have to report  
22 that as income on his tax return, correct?

23 THE COURT: Objection --

24 MR. KWOK: Objection.

25 THE COURT: -- sustained.

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Riley - cross

1 Q. Well, are you aware -- did you examine Dr. Karron's tax  
2 returns --

3 MR. KWOK: Objection.

4 Q. -- as part of this audit?

5 THE COURT: As part of the audit, did you look at his  
6 tax returns?

7 THE WITNESS: I don't recall if I have his tax returns  
8 or not.

9 Q. When, when was the last -- well, if you're correct that --  
10 so the first nine checks, \$18,000 was paid for an expense that  
11 was incurred prior to the grant, right?

12 A. Correct.

13 Q. And it wouldn't matter if you called it rent or you bought  
14 a piece of equipment unrelated to the grant prior to the grant,  
15 it was an expense that he -- it was a debt that he was paying  
16 off, correct?

17 A. Correct.

18 Q. Now, he would be entitled, would he not, to increase his  
19 salary under the rules by as much as 10 percent without prior  
20 approval?

21 A. Salary would probably need to be prior approval. The  
22 personnel salaries total may not need prior approval.

23 Q. May?

24 A. But would need -- the -- if he were using the 10 percent  
25 rule for -- and you had additional salaries of 10 percent. But

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Riley - cross

1 for a specific salary, you know, if things, if things changed  
2 with the named people, that's supposed to get an approval from  
3 the grant people.

4 Q. Isn't he allowed to get 10 percent of the \$800,000 to use  
5 without any budget approval for any line item that had already  
6 been established; isn't that the rule?

7 A. He can reallocate ten percent of the line items if it's --  
8 if it's allowable NIST cost, attributable to the grant.

9 Q. His salary was allowable, correct?

10 A. At the amount they approved.

11 Q. But he could, under the 10 percent rule, he could increase  
12 that salary, correct?

13 A. I'm not sure about that.

14 Q. He could increase -- could he increase equipment?

15 A. Equipment he could.

16 Q. Could he increase fringe benefits?

17 A. Fringe benefits, allowable fringe benefits to the -- it  
18 would be able to increase.

19 Q. That payment -- by the way, Dr. Karron had, you said he had  
20 four accounts, right?

21 A. Four checking accounts.

22 Q. Four checking accounts. And he had a different colored  
23 check for each checking account, correct?

24 A. I don't know.

25 Q. You saw the checks, did you not?

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Riley - cross

1 A. I saw copies of the checks.

2 Q. They were not in color?

3 A. No.

4 Q. These rent checks were paid out of the CASI, Inc. account,  
5 correct?

6 A. I don't recall, but that could be true.

7 Q. Now, you have a schedule as to the rent checks, do you not?

8 THE COURT: Were these checks to the landlord? Rent  
9 checks, was there a landlord here or is it -- or is it a --

10 MR. RUBINSTEIN: Well, Dr. Karron was the landlord,  
11 your Honor.

12 Q. Now, which --

13 THE COURT: I don't know. The witness then should  
14 testify, Mr. Rubinstein.

15 MR. RUBINSTEIN: Okay.

16 Q. You have this on the schedule in the 3500 material,  
17 correct? And I direct your attention to 3500 ten -- 110, page  
18 39 of 44?

19 MR. KWOK: Your Honor, I believe that's government  
20 Exhibit 110.

21 MR. RUBINSTEIN: Yeah, government exhibit. I'm sorry,  
22 Judge.

23 THE COURT: Before you get into that, just so we're  
24 clear, Ms. Riley, was this created after your -- was this  
25 document 110 created after your audit was, December, was

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1 created?

2 THE WITNESS: Yes, yes.

3 THE COURT: After the report was created?

4 THE WITNESS: Yes.

5 THE COURT: All right. So you know, approximately,  
6 when it was created?

7 THE WITNESS: The data base was created in 2004, 2005  
8 but this specific document was created on May 28. It's got the  
9 date on here.

10 THE COURT: I see.

11 Q. Now, by looking at that document, ma'am, could you use that  
12 to refresh your recollection as to how -- the rent was \$2,000 a  
13 month, correct?

14 A. Correct.

15 Q. And by looking at that document, can you tell the jury how  
16 many payments were made of \$2,000 prior to the start of the  
17 grant on October 1?

18 THE COURT: How many payments were made?

19 Q. Yeah, attributable to rent that was for periods prior to  
20 the start of the grant of January -- of October 1, 2001?

21 THE COURT: Do you have a page to refer to?

22 MR. RUBINSTEIN: Yes. It's page 39 of 44. in exhibit,  
23 government Exhibit 110, your Honor.

24 THE COURT: All right.

25 Q. Do you have that, ma'am?

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Riley - cross

1 A. Yes.

2 THE COURT: By the way, what is GL?

3 THE WITNESS: The general ledger, one of the general  
4 ledgers.

5 Q. And by reviewing that document, how many of the rent  
6 payments were made after for time periods after October 1st,  
7 2001, start --

8 A. After -- how many checks were made for the period starting  
9 October 1, 2001?

10 Q. When the grant started.

11 A. When the grant started, how many payments were made, after  
12 that?

13 Q. Right.

14 A. There's 21 payments made during the grant period and nine  
15 payments --

16 Q. 21?

17 A. -- for periods prior to the --

18 Q. During the grant period -- excuse me, ma'am. Did you say  
19 during or before the grant period?

20 A. 21 that were paid during the grant period, and nine were  
21 made for a period prior to the grant award.

22 Q. Isn't it a fact that the -- if you start at the, where it  
23 says rent on office, 30 detailed records, correct?

24 A. Yes.

25 Q. And you start out, the first check was to pay the rent owed

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Riley - cross

1 for January, 2000, correct?

2 A. Correct.

3 Q. And you follow down the next number of checks, there is a  
4 total of nine checks that were attributable to rent owed from  
5 2000, correct?

6 A. Yes.

7 Q. And then that's all prior to the grant, correct?

8 A. The nine, the nine -- the first nine were prior to the  
9 grant.

10 Q. And then you have the next check is January '01, going down  
11 to the bottom of that page?

12 THE COURT: Wait a minute. After the first nine  
13 checks dated October 26, 2001?

14 MR. RUBINSTEIN: No, your Honor.

15 THE COURT: The next check is 11/9, not January.

16 MR. RUBINSTEIN: No, your Honor. If your Honor looks  
17 at details for the check, they have -- they show the date  
18 that -- from the memo as to what period. We concede it was  
19 paid after the grant. But this, these expenses were for --  
20 were owed from 2000.

21 THE COURT: I understand. You've covered that. But  
22 then you skipped this October 26 to January, and there were  
23 payments made in November and in December which you omitted in  
24 your question. You said it was the next check.

25 MR. RUBINSTEIN: I am going by the, the checks in the  
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Riley - cross

1 schedule, your Honor. There's --

2 THE COURT: I'm going by the checks in the schedule  
3 too, page 39 of 44.

4 MR. RUBINSTEIN: Right. The first --

5 THE COURT: So let's frame your question properly.

6 MR. RUBINSTEIN: Okay.

7 Q. The first check that was paid was for January 2000's rent,  
8 correct?

9 A. Yes.

10 Q. The next check was February 2000's rent?

11 A. Yes.

12 Q. Next is March 2000 rent?

13 A. Yes.

14 Q. And April 2000 rent?

15 A. Yes.

16 Q. Then May 2000's rent?

17 A. Yes.

18 Q. June 2000's rent?

19 A. Yes.

20 Q. July 2000 rent?

21 A. Yes.

22 Q. August 2000 rent?

23 A. Yes.

24 Q. September 2000 rent, correct?

25 A. Correct.

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Riley - cross

1 Q. Okay. So those are nine checks that were written after the  
2 grant, but paid for expenses incurred before the grant,  
3 correct?

4 A. Correct.

5 Q. Now, then you have the next check is for January rent 2001,  
6 correct?

7 A. Correct.

8 Q. February rent, 2001?

9 A. Correct.

10 Q. March rent, 2001?

11 A. Correct.

12 Q. April rent, 2001?

13 A. Correct.

14 Q. We'll take December out. Then June rent, 2001?

15 A. Correct.

16 Q. May rent, 2001?

17 A. Correct.

18 THE COURT: But what date -- that's what you're  
19 reading off is the date on the explanation, is that correct?

20 MR. RUBINSTEIN: Correct, your Honor.

21 THE COURT: Well, when were the checks written?

22 MR. RUBINSTEIN: Checks were written in October,  
23 November, December and January -- October, November,  
24 December 2001, after the grant.

25 THE COURT: Is that correct, Ms. Riley?

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Riley - cross

1 THE WITNESS: The checks -- this is the date the  
2 checks cleared the bank on this date.

3 THE COURT: Excuse me?

4 THE WITNESS: The checks cleared the bank. These  
5 would have been the times the checks cleared the bank.

6 THE COURT: When were the checks -- yes or no, were  
7 the checks written in November, December, and January?

8 THE WITNESS: Yes.

9 THE COURT: There were checks written in November were  
10 attributed on the check to payable for the January 1st rent?

11 THE WITNESS: Yes, yes.

12 THE COURT: All right. And similarly --

13 Q. So is it fair to say that 18 of these \$2,000 checks were  
14 written to pay for expenses that occurred prior to the grant?

15 A. Yes.

16 Q. That would come to a total of \$36,000?

17 A. Right.

18 Q. Correct?

19 A. Yes.

20 Q. Okay. Fringe benefits were budgeted for a \$110,000, is  
21 that correct, according to the budget?

22 A. Fringe benefits --

23 Q. Do you have the budget, ma'am?

24 A. Fringe benefits were for --

25 MR. KWOK: Your Honor, may I hand up the budget to the

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Riley - cross

1 witness?

2 THE COURT: You may.

3 MR. KWOK: Government exhibit 22.

4 (Handing)

5 Q. Have you examined exhibit 22, ma'am?

6 A. For year one?

7 Q. Year one.

8 A. \$110,000 is the budget for fringe benefits.

9 Q. And how much fringe benefits were expended by the business?

10 A. I don't have the, the year one amount expended. The year  
11 one -- where is the --

12 Q. You want to look --

13 A. Where is the --

14 Q. You want to look at exhibit 62?

15 A. Less than \$110,000.

16 Q. Pardon? You want to look at exhibit -- maybe this will  
17 help you, exhibit 62. There is an appendix number three.

18 A. Exhibit 62.

19 Q. Page 16. Does that, in any way, refresh your recollection  
20 as to the amount of fringe benefits that were claimed by CASI?

21 A. That doesn't.

22 Q. Do you have anything that, that shows you the amount that  
23 you disallowed, or suggested should be disallowed?

24 THE COURT: What are you referring to now?

25 MR. RUBINSTEIN: There is an appendix in exhibit 62,

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1 government exhibit 62, your Honor, appendix number three,  
2 page --

3 THE COURT: What page?

4 MR. RUBINSTEIN: Page 16.

5 MR. KWOK: Your Honor --

6 THE COURT: Yes.

7 MR. KWOK: I think defense counsel is directing the  
8 witness' attention to the defendant's response, not to her  
9 work.

10 MR. RUBINSTEIN: No. I'm directing her attention to  
11 the left side of the page. As you look at it, there is --

12 THE COURT: I'm just trying to find the page, so I can  
13 determine what you're referring to. Page 16, appendix three?

14 MR. RUBINSTEIN: Appendix three, yes, your Honor.

15 THE COURT: All right.

16 Q. All right. As you look at the page, the left-hand portion  
17 are your numbers, correct, Ms. Riley?

18 A. Okay. The left-hand numbers.

19 Q. As you look at the page?

20 A. Yes.

21 Q. Where it says, disallows, then there is a column?

22 A. Yes, questioned is a column. Yes, okay.

23 Q. And the other side says answer. That was what was  
24 submitted by Mr. Spitz in his presentation, correct?

25 A. Correct.

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Riley - cross

1 THE COURT: So the position -- this is a response to  
2 the draft audit report, as Mr. Kwok said, right, Mr --

3 MR. RUBINSTEIN: No. These are her numbers -- yes.  
4 But those -- yes.

5 THE COURT: As contained in the response --

6 MR. RUBINSTEIN: Okay.

7 THE COURT: -- to the draft audit report.

8 MR. RUBINSTEIN: Fair enough, Judge.

9 THE COURT: What?

10 BY MR. RUBINSTEIN:

11 Q. Did you check that Mr. Spitz had properly calculated and  
12 identified what you had disallowed in this audit?

13 A. I'm sorry, repeat that?

14 Q. In other words, the disallowances are purported by  
15 Mr. Spitz to be what you disallowed as the OIG auditor from  
16 CASI?

17 A. Correct.

18 Q. And did you check these figures so that could you determine  
19 that those were, in fact, your disallowances?

20 A. Correct.

21 Q. So these -- so it's fair to say that the numbers depicted  
22 on the left-hand side of the page, as you look at it, marked  
23 disallowance, are in fact your numbers?

24 A. Correct.

25 Q. And by the way, Mr. Spitz submitted an 80 page response,

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Riley - cross

1 did he not?

2 A. The response? Dr. Karron, with the aid of Mr. Spitz. I --  
3 what, this 38 page response?

4 Q. Well, did you -- was it an 80 page response?

5 THE COURT: It says 16 of 38, Mr --

6 MR. RUBINSTEIN: I know what it says, Judge. I'm just  
7 asking a question.

8 THE COURT: Was it in fact more than this 38 pages,  
9 Ms. Riley?

10 THE WITNESS: I --

11 THE COURT: Do you know?

12 THE WITNESS: I think this is all.

13 THE COURT: Do you know? Yes or no, or you don't  
14 know?

15 THE WITNESS: I don't know.

16 THE COURT: Okay.

17 THE WITNESS: This is all I know.

18 Q. Your total questionable items was \$547,000, correct? You  
19 want to look at 3502B, top of the second page and see if that  
20 refreshes your recollection?

21 A. 547?

22 Q. What?

23 A. Yeah 547.

24 Q. 547,000 was questionable, correct?

25 A. Correct.

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Riley - cross

1 Q. And you didn't change one dollar after you reviewed  
2 Mr. Spitz's response, correct?

3 A. Correct.

4 Q. And it's a fact that --

5 THE COURT: Who gave the response; do you know who  
6 wrote it?

7 THE WITNESS: The response says that Dr. Karron, with  
8 the aid of, wrote it.

9 THE COURT: Dr. Karron, with the aid of Mr. Spitz?

10 THE WITNESS: On page, on page one of 38.

11 THE COURT: All right. Thank you.

12 Q. So were there additional rebuttals, other than this  
13 appendix? Were there other documents submitted besides this  
14 rebuttal that we have here in appendix three?

15 A. After the final report? After the report was -- after the  
16 draft?

17 Q. No, when you received --

18 A. I don't recall any, any other.

19 Q. Well, do you recall telling Mr. Kwok on April 22nd, 2008  
20 that an 80 page rebuttal was submitted?

21 A. I don't recall.

22 Q. Let me show it to you. You met with Mr. Kwok on April --  
23 I'm sorry -- April 22nd, correct?

24 A. I don't recall the date.

25 Q. I show you what's -- when you met with Mr. Kwok, did he

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1 take notes when he spoke to you?

2 A. I don't recall if he took notes.

3 Q. All right. I'm going to show you what's been marked as  
4 3502B and identified as defendant's exhibit I for  
5 identification and ask you to look at the second page where I  
6 have a number ten on the right-hand side and see if that  
7 refreshes your recollection as to telling Mr. Kwok that an 80  
8 page rebuttal was submitted?

9 A. I don't recall saying an 80 page rebuttal was submitted.

10 Q. Okay. Now, do you have any calculation for the, for the  
11 total amount of fringe benefits that were expended?

12 A. Total amount -- yes.

13 Q. And what was the total amount --

14 A. For --

15 Q. -- of fringe benefits that were expended by CASI?

16 MR. KWOK: Your Honor, if I could direct the witness'  
17 attention to government exhibit 114 and 115.

18 (Handing)

19 THE COURT: It's 10 after 11:00. While you're  
20 conferring, let's have the jury take a break while you confer  
21 and get your examination together.

22 (Jury exits the courtroom)

23 (Continued on next page)

24

25

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Riley - cross

1 (In open court; jury not present)

2 THE COURT: All right, are you near the end?

3 MR. RUBINSTEIN: Unfortunately not, Judge, because I  
4 can't get yes or no answers, and --

5 THE COURT: You can get yes or no answers.

6 MR. RUBINSTEIN: All right.

7 THE COURT: All you have to do is ask for them, you'll  
8 have them.

9 MR. RUBINSTEIN: I'll do that.

10 THE COURT: All right, thank you.

11 (Recess)

12 THE COURT: All right, please be seated. Let's bring  
13 in the jury.

14 (Jury entering)

15 THE COURT: Please be seated.

16 All right, Mr. Rubinstein.

17 BY MR. RUBINSTEIN:

18 Q. I had asked you before the break if you have a total of the  
19 amount of fringe benefits that were paid by CASI?

20 THE COURT: In any year?

21 Q. If the year, first year in rent. We've established that  
22 they were authorized to pay 110,000, and the government gave  
23 you exhibits one -- government Exhibit 114 and 115 for you to  
24 refresh your recollection?

25 A. Correct. And so they have an allocation for 163,460,

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866zkar2 Riley - cross

1 according to the checks.

2 Q. Pardon?

3 A. 160 -- 100 and -- in the checks written --

4 THE COURT: What are you looking at?

5 THE WITNESS: At the government 110.

6 Q. Looking at government 110?

7 THE COURT: Where in government 110? What?

8 THE WITNESS: Oh, I'm sorry. On page ten of 44. Page  
9 ten, page ten.

10 THE COURT: 10 of 44?

11 THE WITNESS: 10 of 44.

12 Q. What was that page again, please?

13 THE COURT: Page ten of 44, Mr. Rubinstein.

14 MR. RUBINSTEIN: Thank you.

15 THE COURT: What is 110 taken from, Ms. Riley; whose  
16 records are you basing this on?

17 THE WITNESS: On the -- this document is the one we  
18 did from the cancelled checks after last year -- after the  
19 audit.

20 Q. So it's pages 110 and 111, is that -- I'm sorry, pages ten  
21 and 11 of Exhibit 110, is that what you're referring to?

22 THE COURT: She said page ten of 44.

23 Q. 10 of 44?

24 A. 10 of 44, yes.

25 Q. What is your total amount of fringe benefits that was

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Riley - cross

1 claimed?

2 A. 158 -- I don't have that for a year.

3 THE COURT: Do you have it for --

4 THE WITNESS: The claims, the claimed amount is  
5 158,576.

6 THE COURT: For what period?

7 THE WITNESS: October 1, 2001 through June 27th, 2003.

8 Q. So that's for a year and nine months?

9 A. Yes.

10 Q. You do not have the -- they were entitled to 110,000 in  
11 fringe benefits the first year, correct?

12 A. Correct.

13 Q. And they were entitled, I think, to 127,000 the second  
14 year; am I correct or incorrect about that?

15 A. Correct.

16 Q. So that that would be over 230,000 for fringe benefits, and  
17 that includes the payroll taxes, right?

18 A. Correct.

19 Q. How much of this figure was the payroll taxes; is that on  
20 the bottom of page 11?

21 A. How much of which figure?

22 Q. Of the, your 163,460.37 is your total fringe benefit  
23 expenses, actual expenses, for 21 months of the grant, correct?

24 A. Can you repeat that?

25 Q. The fringe benefits for -- from October 1st, 2001 to June

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Riley - cross

1 30th, 2003, are reflected in this number that says, where it  
2 says fringe benefits on the left, if you go across in bold  
3 print, you go across that line, it says 129 detailed records?

4 MR. KWOK: What document, your Honor?

5 THE COURT: Yeah, let's -- we don't know what you're  
6 reading from.

7 MR. RUBINSTEIN: I'm sorry, Judge.

8 THE COURT: You don't identify it.

9 MR. RUBINSTEIN: I'm sorry. I thought we were all --

10 THE COURT: It makes no sense for the record, Mr.  
11 Rubinstein.

12 MR. RUBINSTEIN: I'm sorry, Judge. I thought we were  
13 all on page ten of 44 of Exhibit 110. That's what we're  
14 talking about.

15 THE COURT: She's testified to what it was. Let's go  
16 on, 160. It shows there, for the record, 163,460. Is that  
17 correct, Ms. Riley?

18 THE WITNESS: Yes.

19 Q. For a 21 month period, starting --

20 THE COURT: We've covered that.

21 Q. Okay. How much of that was withholding, payroll  
22 withholding taxes that are considered fringe benefits?

23 A. 135,000.

24 THE COURT: How much?

25 THE WITNESS: One -- it's -- the employment tax amount

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Riley - cross

1 includes the, the employer's share, but it's 135,000 for the  
2 total employment tax.

3 THE COURT: I'm sorry?

4 THE WITNESS: 135,000 on page 11 of 44.

5 THE COURT: Page 11 of 44?

6 THE WITNESS: Of 110.

7 THE COURT: All right.

8 Q. And so the non-payroll tax fringe benefits equal what?

9 A. Approximately 35 -- approximately \$30,000.

10 Q. Now, and you disallowed -- your recommendation was a  
11 disallowance of \$68,884, correct?

12 A. Correct.

13 Q. Because when you disallowed salary, you disallowed what the  
14 percentage of payroll tax would be applicable to that salary,  
15 correct?

16 THE COURT: Is that the reason you did it?

17 THE WITNESS: Repeat that, please?

18 Q. Yeah. When you disallowed salary, you know, like Gurfein's  
19 25,000, Dr. Karron's 40 some odd thousand, you then disallowed  
20 as allowable expense the payroll tax that was paid on that  
21 \$71,000?

22 A. Correct.

23 Q. So that if the salary was in fact allowable, then the  
24 fringe benefit would've been allowable, correct?

25 A. Correct.

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Riley - cross

1 Q. And did you disallow -- well, I'll withdraw that.

2 Now, you also had a category of meals, correct?

3 A. Correct.

4 Q. And you had disallowance in that category?

5 A. Correct.

6 Q. You showed us an entire schedule related to meals, correct?

7 A. Correct.

8 Q. And did you ascertain whether or not -- withdrawn. It's  
9 appropriate, if you have a business meeting, to -- meals are  
10 deductible, are they not?

11 MR. KWOK: Objection. Deductible?

12 Q. Well, allowable. I'm sorry. Is that correct?

13 A. For what?

14 Q. Are meals an allowable expense if --

15 A. Approved by the budget.

16 Q. -- if discussing CASI business at a coffee shop?

17 THE COURT: Allowable grant expense?

18 THE WITNESS: No, not for discussing CASI.

19 THE COURT: What?

20 Q. Pardon?

21 THE COURT: Why not?

22 THE WITNESS: No. The meals -- the meals would not  
23 be -- meals would depend.

24 Q. Pardon?

25 A. Meals -- they would -- for discussing CASI business, they

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Riley - cross

1 would not be allowable.

2 Q. On what theory?

3 A. Some --

4 Q. What auditing theory is there that says that a business  
5 meeting conducted in a restaurant or in a board room where food  
6 is supplied, is not an allowable expense?

7 A. They -- it would --the some -- some may be allowable for --  
8 for NIST expense.

9 THE COURT: What, I'm sorry?

10 A. To discuss NIST. But for meetings to discuss CASI business  
11 expense --

12 Q. Well, the only business CASI had was NIST, correct?

13 A. All of the aspects of a NIST are not -- the  
14 commercialization of the end product of the marketing strategy  
15 of the product you're creating is not an allowable expense,  
16 even though it's required by NIST for the grant.

17 Q. Did you inquire as to what any of these meal deductions  
18 related to?

19 A. I, I've -- yes.

20 Q. And did you ascertain that in the computer at CASI with the  
21 scanned invoices and checks, were also scanned receipts from  
22 each one of these items that you say are -- that you list in  
23 the meals category?

24 A. I don't recall if I have a specific sample from the food  
25 category.

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Riley - cross

1 Q. Is it fair to say, ma'am, that you just took the American  
2 Express statement, monthly statements and just wrote down every  
3 meal that was charged, or coffee or Chinese food or whatever,  
4 right?

5 A. For the review of the end analysis of checks, yes.

6 Q. The analysis of the American Express, there were no checks  
7 written for these, quote, meals, correct?

8 A. Correct.

9 Q. They were paid for by the American Express card, right?

10 A. Correct.

11 Q. Now, did you ever request any backup to show what -- who  
12 was present when these funds were expended?

13 A. I don't recall.

14 Q. Well, let me show you what's been marked for identification  
15 as defendant's -- I show you what's been marked as defendant's  
16 exhibit CCC.

17 MR. RUBINSTEIN: Here, your Honor.

18 (Handing)

19 THE COURT: Thank you.

20 (Continued on next page)

21

22

23

24

25

8667KAR3

Riley - cross

1 BY MR. RUBINSTEIN:

2 Q. I show you what's been marked for identification as CCC.

3 Are you familiar with that document, ma'am?

4 A. I don't recall.

5 Q. Well, why don't you take a look at Government Exhibit 110,  
6 page 24 of 37. In the middle of the page you have a Moonstruck  
7 East restaurant on 4/5/03, right?

8 A. Correct.

9 Q. In the amount of \$50, right?

10 A. Yes.

11 Q. And that's in the amount of \$50, correct?

12 A. Sorry. What?

13 Q. CCC --

14 A. Yes.

15 Q. Is that the receipt for the same date and the same amount

16 --

17 A. Yes.

18 Q. -- that you have in your exhibit?

19 A. Yes.

20 Q. And you never saw this before, correct?

21 A. CCC?

22 Q. Yes.

23 A. I don't recall seeing this before.

24 Q. Did you ever ask for any documentation of any of the meals  
25 that you disallowed?

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Riley - cross

1 A. I don't recall.

2 Q. Page 2, do you see what's reflected on page 2 of that  
3 document, CCC?

4 A. Oh, yes.

5 MR. RUBINSTEIN: We offer CCC into evidence, your  
6 Honor.

7 MR. KWOK: Objection.

8 THE COURT: CCC is admitted into evidence.

9 (Defendant's Exhibit CCC received in evidence)

10 Q. Do you see on the second page it says dinner meeting,  
11 correct?

12 A. Yes.

13 Q. And do you recognize Dr. Karron's signature?

14 A. Yes.

15 Q. And do you recognize -- there are two other signatures  
16 there, correct?

17 A. Correct.

18 Q. Do you recognize either of those signatures?

19 A. I -- no.

20 THE COURT: She doesn't recognize any of the  
21 signatures.

22 MR. RUBINSTEIN: I just want to exhibit that to the  
23 jury, your Honor. That's the rear portion of the receipt.

24 Q. Bottom line says dinner meeting. Above that is Dr.  
25 Karron's signature, right, Ms. Riley?

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Riley - cross

1 A. Correct.

2 Q. And above that are two other items, correct?

3 A. Correct.

4 Q. That you cannot identify?

5 A. Correct.

6 THE COURT: Let's move it along, Mr. Rubinstein. We  
7 don't need all those extended conferences at the table there.  
8 Let's please move it on. We don't need those extended waits  
9 and extended time. We are losing a lot of time by that.

10 Q. Did you in fact go with Dr. Karron and Bob Benedict to  
11 Christine's on June 25, 2003?

12 A. Yes.

13 THE COURT: What? To where?

14 MR. RUBINSTEIN: C-R-I-S-T-I-N-A-'-s.

15 Q. Did you go there?

16 A. I went to a restaurant with them.

17 THE COURT: You did go to a restaurant with them?

18 THE WITNESS: Um-hum.

19 Q. And did you -- the audit is deductible, correct? The cost  
20 of the audit is deductible.

21 THE COURT: The cost of whose audit?

22 Q. The payment for an auditor, Ms. Hayes in this case, is a  
23 deductible expense, allowable expense, under the NIST grant,  
24 correct?

25 THE COURT: The cost for Ms. Hayes auditing the books

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Riley - cross

1 is a deductible expense, that's true. Is that correct?

2 THE WITNESS: Yes, the cost of the audit is a  
3 deductible expense.

4 Q. And in fact when you went to lunch -- rather, when you went  
5 out with Dr. Karron and Ms. Hayes, Dr. Karron paid for that,  
6 did he not?

7 A. Yes, I guess.

8 Q. I show you what's been marked --

9 THE COURT: Did he pay for it?

10 THE WITNESS: I guess. I guess.

11 THE COURT: You don't know.

12 THE WITNESS: I don't recall.

13 THE COURT: All right. Then answer that.

14 Q. Let me show you what's been marked as Defendant's N for  
15 identification and ask you to look at the front.

16 THE COURT: Please, let's move it along.

17 MR. RUBINSTEIN: Well, I'm waiting for an answer from  
18 the witness.

19 THE COURT: What have you shown her?

20 MR. RUBINSTEIN: I have shown her Exhibit N, as in  
21 Nancy. My wife's name.

22 THE COURT: Let me see it. I haven't gotten a copy.

23 MR. RUBINSTEIN: I'm trying to print it out now,  
24 Judge.

25 THE COURT: What date is it?

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Riley - cross

1 MR. RUBINSTEIN: The date is June 25, 2003. It's  
2 reflected on Government Exhibit 110, page 23 of 37.

3 THE COURT: All right.

4 Q. Ma'am, by looking at Exhibit N, does that refresh your  
5 recollection?

6 A. Exhibit N?

7 Q. Yes.

8 A. Yes.

9 Q. And, as a matter of fact, do you recall that you paid your  
10 own share?

11 A. Yes.

12 Q. And so \$17 even was the share for Ms. Hayes, Mr. Benedict  
13 and Dr. Karron, correct?

14 A. This is showing that Ms. Hayes paid separately also.

15 Q. Ms. Hayes paid separately, OK. And that was during, while  
16 you were there to do your field work.

17 A. Yes.

18 Q. Right?

19 A. Yes.

20 Q. You deducted -- you disallowed that meal, that \$17 on your  
21 schedule, right?

22 THE COURT: Just yes or no.

23 A. Yes.

24 Q. Did you feel that going and discussing -- you discussed  
25 audit business, did you not?

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Riley - cross

1 A. Yes, we did.

2 Q. Do you feel that that meeting, discussing audit business,  
3 is not an allowable expense under NIST?

4 A. No.

5 Q. No what? It's not allowable?

6 A. It would be allowable.

7 THE COURT: It what?

8 THE WITNESS: Would be allowable.

9 THE COURT: It would be allowable.

10 THE WITNESS: If there was -- yes, it would be  
11 allowable.

12 MR. RUBINSTEIN: We offer Defendant's N into evidence.

13 MR. KWOK: Objection, your Honor. The witness has not  
14 authenticated the document.

15 THE COURT: Let me see the document.

16 Q. Did you sign the back of that, ma'am? Is that your  
17 signature on the back?

18 THE COURT: Is that your signature, or is that someone  
19 else's writing?

20 THE WITNESS: It's not my signature.

21 Q. But that is the expense that you have on your sheet, do you  
22 not? That is for the same date, the same amount, the same  
23 restaurant that you have listed in Exhibit 110, correct?

24 THE COURT: I am allowing it into evidence. Let's go  
25 ahead.

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Riley - cross

1 MR. RUBINSTEIN: OK.

2 THE COURT: What page is this on?

3 MR. RUBINSTEIN: Page 23 of 37, your Honor, near the  
4 top quarter of the page.

5 THE COURT: All right.

6 Q. Now, in addition to that, you have on page 22, number 37 of  
7 Exhibit 110, you have expenses for a restaurant Benjamin's. Do  
8 you see that? It says 530 is the number on the left-hand side.

9 THE COURT: What page?

10 MR. RUBINSTEIN: Page 22 of 37.

11 THE COURT: Go ahead. What date are you referring to?

12 Q. Do you know what the first visit to Benjamin's was at  
13 November 5, 2002?

14 THE COURT: Did you ever ask about November 5, 2002?

15 THE WITNESS: I don't recall.

16 Q. Well, are you aware -- did you ever speak to -- withdrawn.

17 You spoke to Ms. Lide and Ms. Orthwein of NIST ATP,  
18 correct?

19 A. Yes.

20 Q. Are you aware as you sit there now whether or not they went  
21 with Dr. Karron to Benjamin's restaurant when they came for  
22 their site visit at CASI?

23 A. I don't know what they did.

24 Q. Now, you got these expenses from the American Express card,  
25 correct?

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Riley - cross

1 A. Correct.

2 Q. And were there meals charged every day to the American  
3 Express card?

4 A. No.

5 Q. As a matter of fact, Dr. Karron had another credit card,  
6 did he not?

7 A. A personal -- yes.

8 Q. He had a Mastercard, right?

9 A. Yes.

10 Q. Have you ever reviewed his Mastercard records?

11 A. No.

12 Q. Either in your Government Exhibit 110 or Government Exhibit  
13 111 you have a Mastercard schedule, do you not?

14 A. I have an American Express schedule.

15 Q. No Mastercard.

16 A. No.

17 Q. And you never saw a Mastercard schedule?

18 A. I don't recall seeing a Mastercard schedule.

19 THE COURT: Let's move this along, Mr. Rubinstein.

20 MR. RUBINSTEIN: Yes, your Honor.

21 Q. And the equipment -- sorry, supplies, did you disallow  
22 supplies?

23 A. Yes.

24 Q. And how much supplies did you disallow?

25 A. Supplies, 24,000.

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Riley - cross

1 THE COURT: Which year are we talking about?

2 MR. RUBINSTEIN: The first year of the grant.

3 A. Oh, the first year? That's total grant.

4 THE COURT: It's the total grant.

5 MR. RUBINSTEIN: Pardon?

6 THE COURT: You have to move this along. I mean you  
7 are putting me to sleep, Mr. Rubinstein. Let's move it along.  
8 All right? I'm only going to allow you another 15 or 20  
9 minutes. That's it.

10 MR. RUBINSTEIN: I agree with you, Judge.

11 THE COURT: Let's go.

12 Q. You disallowed utilities, did you not?

13 A. Disallowed utilities?

14 Q. Yes.

15 A. Yes.

16 Q. Are you aware that there were discussions between Dr.  
17 Karron and NIST as to whether to allow a portion of the  
18 utilities?

19 A. Yes.

20 THE COURT: When? All right.

21 Q. And is it fair to say that you determined that a portion of  
22 the utilities should be allowable?

23 MR. KWOK: Your Honor, is it an audit, or is it an  
24 analysis based on the bank statements? I don't know what  
25 Mr. Rubinstein is asking.

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Riley - cross

1 THE COURT: The audit? Are you addressing the audit,  
2 Mr. Rubinstein?

3 MR. RUBINSTEIN: Yes.

4 THE COURT: In the audit, did you say that some -- did  
5 you determine that a portion of the utilities should be  
6 allowable? Yes or no? Yes or no?

7 THE WITNESS: No.

8 THE COURT: All right.

9 Q. And what about education?

10 A. No.

11 Q. You disallowed all the education, right?

12 A. Right.

13 Q. Even if the education was related to the NIST ATP project,  
14 correct?

15 THE COURT: Were you advised that any of it related to  
16 the project?

17 THE WITNESS: Yes.

18 THE COURT: What?

19 THE WITNESS: Yes.

20 THE COURT: What portion?

21 THE WITNESS: One of the costs was for a student.

22 There were two educational costs, and I think one was for a  
23 student.

24 THE COURT: One was for a student.

25 THE WITNESS: The Ph.D student, right? A student

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Riley - cross

1 employee that Dr. Karron had.

2 Q. And another one was Joan Hayes going to a seminar to learn  
3 about auditing for federal grants, correct?

4 A. Correct.

5 Q. You disallowed both of them, correct?

6 A. Correct.

7 Q. Now, you could permit fringe benefits either under the  
8 budget item or it could be chargeable to others, right?

9 A. Correct.

10 Q. By the way, there was some talk about medical bills. Do  
11 you know when Dr. Karron had surgery?

12 THE COURT: Did you know he had surgery at all?

13 THE WITNESS: I knew he had surgery. I don't know  
14 when.

15 Q. Isn't it a fact that it was after the grant was suspended?

16 A. I don't know when.

17 THE COURT: The surgery was or that she learned of it?

18 Q. Did you see any expense, medical expense, for surgery for  
19 Dr. Karron?

20 MR. KWOK: When?

21 Q. When you did your audit.

22 A. There were medical expenses for Dr. Karron.

23 Q. Did you see anything for surgery?

24 A. I don't recall seeing anything specifically, what  
25 everything was.

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Riley - cross

1 Q. Now this audit that NIST requires, requires an independent  
2 auditor, correct?

3 A. Correct.

4 Q. And they had Ms. Hayes, correct?

5 A. Correct.

6 Q. In fact you were aware that Ms. Hayes did Dr. Karron's  
7 personal tax returns, were you not?

8 A. I don't recall if I knew that at the time or not.

9 Q. Would that disqualify her as an independent auditor?

10 MR. KWOK: Objection.

11 THE COURT: Did you allow the expense for her as an  
12 independent auditor?

13 THE WITNESS: Yes.

14 THE COURT: You did. Objection sustained.

15 Q. My question is she created records that she gave to you,  
16 correct?

17 A. Correct.

18 Q. Now, is it fair to say that the person that does the  
19 audit -- in this case Ms. Hayes -- is supposed to be an  
20 independent auditor?

21 A. Correct. Correct.

22 Q. Because she might have some interest if she wasn't  
23 independent, correct?

24 A. Correct.

25 Q. In this case were you aware whether or not she was involved

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Riley - cross

1 in management decisions?

2 THE COURT: Do you know?

3 THE WITNESS: I'm not sure how much her involvement  
4 was.

5 THE COURT: Sorry?

6 THE WITNESS: I don't -- I don't know.

7 THE COURT: You didn't know that.

8 THE WITNESS: I don't know about her.

9 Q. Are you familiar with Quick Books, the system Quick Books?

10 A. Yes.

11 Q. Were you familiar with them in 2003 when you did this  
12 audit?

13 A. No.

14 THE COURT: You weren't familiar with the --

15 THE WITNESS: I'm not familiar --

16 THE COURT: -- with that system of bookkeeping?

17 THE WITNESS: No, I'm not familiar. I wasn't familiar  
18 with that system of bookkeeping.

19 Q. Now, you told this jury -- how much money of Dr. Karron was  
20 attributable as a cofund by Dr. Karron?

21 MR. KWOK: Objection.

22 THE COURT: Sorry. Could I hear the question.

23 Q. Yeah. How much money do you say was contributed by Dr.  
24 Karron as his contribution to the NIST ATP project?

25 A. Nothing.

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Riley - cross

1 Q. Do you recall testifying here and saying it was very small,  
2 between \$1200 and \$1500?

3 THE COURT: That's not my recollection of the question  
4 and testimony as to his contribution.

5 Q. Well, you said it was miscellaneous. Do you recall that?

6 A. Yes.

7 Q. And do you have a schedule of what you say were  
8 miscellaneous contributions?

9 THE COURT: Is the answer yes?

10 THE WITNESS: Yes. I'm sorry. Yes.

11 THE COURT: Do you want her to look it up?

12 MR. RUBINSTEIN: No, your Honor, I want to move along.

13 Q. How much was in the bank in the beginning of October, in  
14 the CASI accounts in the beginning of October 2001?

15 A. I don't recall. Is there a bank statement?

16 Q. Well, let me show you what's been marked as Defendant's O.

17 THE COURT: Defendant's O for identification.

18 MR. RUBINSTEIN: I'm sorry. I will withdraw that.

19 Q. Do you know what sunk costs are?

20 A. What?

21 Q. Do you know what sunk costs means?

22 A. No.

23 THE COURT: Sunk costs?

24 MR. RUBINSTEIN: S-U-N-K costs.

25 A. No.

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Riley - cross

1 Q. Do you know whether or not purchases made for the grant,  
2 that were made prior to the grant's start of October 1, 2001,  
3 were paid after October 1, 2001, whether or not those are  
4 proper expenditures under the grant?

5 A. Grants paid prior to the grant award need written  
6 permission.

7 THE COURT: Sorry? Witness.

8 A. Payments made prior to the grant award need written  
9 approval by NIST. They need written approval. Is that what  
10 we're asking? Costs that were before the award? ATP costs  
11 that were made prior to the award, is that allowable in the  
12 grant? If the grant award document allows it.

13 THE COURT: If you have written approval.

14 THE WITNESS: Yes, if you have written approval.

15 Q. So, if you purchased something, if CASI purchased the Quick  
16 Books software in September of 2001 and it was delivered after  
17 the grant -- after October 1, 2001, and paid for in November of  
18 2001, would that be an allowable or unallowable item?

19 A. If it was used for the ATP grant, it was part of the grant  
20 cost it could be allowable.

21 THE COURT: It could be. On what condition?

22 THE WITNESS: If it's specifically for the ATP  
23 project, the software for a specific accounting -- if the  
24 business accounting is also done on that system it would not  
25 necessarily be allowable, because the business should already

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Riley - cross

1 have it in place as part of their business.

2 Q. Did you entertain how much costs were incurred prior to the  
3 October 2001 by CASI on behalf of the ATP NIST grant?

4 A. Specifically I used the books provided, and whatever they  
5 requested was considered. So if it's a cost that was prior to,  
6 it would have been considered if it was on the books, because I  
7 think they went to the check to cash basis, so they would have  
8 paid --

9 THE COURT: Sorry. What did you say?

10 THE WITNESS: I think Mr. Spitz had moved to the cash  
11 basis, so if it was included as payment it would have been one  
12 of the things claimed, probably under equipment or supplies,  
13 and would be over budget, so it would be over budget.

14 Q. How about the cost share provided by donating equipment, is  
15 that permissible?

16 A. If it's specifically NIST ATP project costs, yes.

17 Q. Did you make any allowance -- withdrawn.

18 Were you aware whether or not Dr. Karron had computers  
19 and equipment prior to the ATP grant?

20 A. Yes.

21 Q. Did you make any allowance to give him credit for his share  
22 of the contribution of about \$36,000 in the first year of the  
23 grant that he was supposed to contribute?

24 A. I asked for their cost share. No one put forth that as an  
25 answer.

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Riley - cross

1 Q. No one mentioned that?

2 A. Right, no one came up -- no one provided documentation to  
3 show that.

4 THE COURT: And no one said so?

5 THE WITNESS: Right. No one offered that. I don't  
6 recall anyone offering that as a thing for match, but usually  
7 you would have whatever you would go into a business, that  
8 would not be what they considered their cost share or their  
9 match share.

10 Q. Isn't it a fact that Mr. Spitz gave you backup to show when  
11 the equipment was purchased?

12 A. Most -- I was under the impression that the equipment had  
13 been replaced by the equipment purchased with this award.

14 Q. And who gave you that impression?

15 A. Various people that I spoke to, reviewing the invoices of  
16 the equipment cost.

17 Q. Now, it's your testimony that Dr. Karron did not contribute  
18 any funds to the --

19 THE COURT: You've got about five minutes.

20 Q. I show you that Dr. Karron contributed nothing, no  
21 financial funds to the grant. Is that your testimony?

22 A. Correct.

23 Q. You reviewed the checks, Dr. Karron's personal checks?

24 A. Correct.

25 Q. And I show you what's been marked for identification as

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Riley - cross

1 Defendant's FFF and ask you do you recognize what's contained  
2 in that document?

3 A. Checks.

4 Q. Pardon?

5 A. They're checks.

6 Q. Are those checks of Dr. Karron's on account ending 1665?

7 A. OK.

8 Q. Do you recognize those checks?

9 THE COURT: FFF.

10 Q. FFF?

11 A. Yes.

12 MR. RUBINSTEIN: We offer them in evidence, your  
13 Honor.

14 THE COURT: FFF are admitted in evidence.

15 MR. KWOK: No objection.

16 (Defendant's Exhibit FFF received in evidence)

17 Q. Now, I show you what's in evidence. This is copies of a  
18 number of checks with the fronts and the backs. Now, do you  
19 see that exhibit, ma'am?

20 THE COURT: This is part of FFF?

21 MR. RUBINSTEIN: Yes, your Honor.

22 A. Yes.

23 Q. Do you see what date that is?

24 A. 10/11/2001.

25 Q. And who is the payee?

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Riley - cross

1 A. Computer Aided Surgery.

2 Q. And is there a memo on there?

3 A. Emergency loan to the Computer Aided Surgery.

4 Q. So, that's \$2,000 that was -- and Computer Aided Surgery,  
5 Inc is the account that NIST expenses were being made out of,  
6 right?

7 THE COURT: Sorry?

8 A. Yes.

9 Q. NIST expenses were being paid at that time out of this  
10 account.

11 A. Yes.

12 Q. And in fact this is prior to the time that any NIST monies  
13 were transferred to Dr. Karron.

14 A. Yes.

15 THE COURT: To what account?

16 MR. RUBINSTEIN: Any account.

17 THE COURT: This is prior to the time that any money  
18 was paid to that account?

19 MR. RUBINSTEIN: Correct. I think the first time was  
20 October 25, if I'm not mistaken.

21 Q. Now, I show you this check marked 1052 as part of Exhibit  
22 FFF. See if you recognize that check.

23 A. Yes.

24 Q. And that is also a check made to Computer Aided Surgery  
25 Inc. in the amount of \$1,000, correct?

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Riley - cross

1 A. Correct.

2 Q. And it says the memo is emergency loan to corporation.

3 Right?

4 A. Right.

5 Q. And again that's the corporation that's paying NIST bills,  
6 right?

7 A. At this time -- when did the ATP account come into  
8 existence?

9 THE COURT: I can't hear you.

10 THE WITNESS: It may have been --

11 Q. And on August 12, 2002 Dr. Karron's personal check number  
12 1121 was payable to CASI, Computer Aided Surgery, Inc.?

13 A. Yes.

14 Q. The memo is loan to the company?

15 A. Yes.

16 Q. So he is loaning his personal money to the company, right?

17 A. Yes.

18 Q. And how much is that check for?

19 A. \$20,000.

20 Q. Do you have any record in all of your records of any of  
21 these checks so far?

22 A. Yes. Yes.

23 Q. As contributions of Dr. Karron?

24 A. No, no.

25 THE COURT: You have records of the checks?

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Riley - cross

1 THE WITNESS: Yes.

2 THE COURT: Where?

3 THE WITNESS: They're -- they're both records  
4 actually.

5 MR. KWOK: Your Honor, may we direct the witness to a  
6 particular page of Government Exhibit 110?

7 THE COURT: Yes.

8 MR. KWOK: Government Exhibit 110, page 38 of 44.

9 Q. So, is it fair to say in reviewing your record that you  
10 have a total of \$37,000 attributable to contributions made by  
11 Dr. Karron, is that right?

12 A. I considered them loan repayment to the \$129,000 that he  
13 had taken from the NIST ATP account.

14 Q. Pardon?

15 THE COURT: Repeat your answer. You speak very  
16 quickly, and you just rattle it off. All right?

17 A. OK. I attributed the \$37,000 payments as loan repayments  
18 to the \$129,850 that Dr. Karron had taken as loans from the  
19 NIST ATP grant.

20 Q. Time out. Dr. Karron took \$75,000 loan in October or early  
21 November 2001, after he got \$150,000 from NIST ATP, correct?

22 A. Correct.

23 Q. You did your analysis when?

24 A. Which analysis?

25 Q. When did you do your analysis?

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Riley - cross

1 A. I --

2 Q. When did you make that determination that these were  
3 repayment of a loan?

4 A. Initially back --

5 Q. In June of '03?

6 A. December of '03.

7 Q. December of '03?

8 A. Or June of '03.

9 THE COURT: Well, wait a minute. She hasn't finished.

10 A. Wait. What's the --

11 THE COURT: What's the rest of your answer?

12 THE WITNESS: June of '03.

13 THE COURT: Pardon?

14 THE WITNESS: June of 2003.

15 THE COURT: June of 2003.

16 Q. Isn't it a fact, ma'am, that in August and September of  
17 2002 Dr. Karron repaid that money out of his salary in fact?

18 A. The repayments of the salary were part of expenditures that  
19 were also disallowed. It depends on which --

20 Repeat your question.

21 Q. In August of '02 did you see an entry on August 2, 2002 of  
22 \$61,918.07 as salary to Dr. Karron?

23 THE COURT: What are you referring to, Mr. Rubinstein?  
24 Is it an exhibit in evidence? What is it?

25 Q. Did you calculate at any time the monies received as salary

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Riley - cross

1 in a schedule, salaries received by Dr. Karron?

2 THE COURT: I don't understand the question.

3 MR. RUBINSTEIN: He received payment.

4 THE COURT: I just want to hear the question phrased  
5 so that it's understandable.

6 MR. RUBINSTEIN: The question is did this witness  
7 prepare a schedule showing the salary checks of Dr. Karron from  
8 October 1, 2001 until September 30, 2002, the first year of the  
9 grant?

10 THE COURT: What time are you asking?

11 MR. RUBINSTEIN: During that year, the first year of  
12 the grant.

13 THE COURT: During the year -- October 1, 2002.

14 MR. RUBINSTEIN: 1, October 1, 2001.

15 THE COURT: 2001 to September 30, 2002, did you  
16 prepare a schedule? Is that your question?

17 MR. RUBINSTEIN: Yes.

18 THE COURT: Of his salary for that year?

19 MR. RUBINSTEIN: Right.

20 THE COURT: Were you assigned to the audit in that  
21 period of time?

22 THE WITNESS: I did the audit starting June of 2003.

23 THE COURT: So, you couldn't have done anything during  
24 that first fiscal year, is that right?

25 THE WITNESS: Right, yes.

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Riley - cross

1 THE COURT: You didn't prepare any schedules during  
2 the first fiscal year.

3 THE WITNESS: Right.

4 THE COURT: Do you want to reframe your question,  
5 Mr. Rubinstein?

6 Q. Do you know what a schedule is, ma'am?

7 MR. KWOK: Objection.

8 THE COURT: Objection sustained. Five more minutes.  
9 Five more minutes, that's it.

10 MR. RUBINSTEIN: Judge, it's not fair.

11 THE COURT: Five minutes.

12 MR. RUBINSTEIN: I'm not getting answers.

13 THE COURT: You're getting answers; you're not asking  
14 questions. You're dawdling around there in the back of the  
15 courtroom.

16 MR. RUBINSTEIN: I am not.

17 THE COURT: And you're not asking questions. Now ask  
18 questions and do it quickly.

19 Q. How many checks did Dr. Karron receive in the first year of  
20 the grant for salary?

21 A. I don't recall.

22 Q. Do you have any notes or notations?

23 A. I have it in this document I prepared in 2004. I don't  
24 have --

25 Q. You have a figure in Government Exhibit 114 and 115.

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Riley - cross

1 That's the backup for that?

2 A. This document is the backup for the 114 and 115, and in the  
3 first year of the grant --

4 THE COURT: And you are looking now at Exhibit 110?

5 THE WITNESS: Yes.

6 THE COURT: All right. Where in 110? Can we point to  
7 a page where his salary is listed? Can the government point me  
8 to a page? Let's move this on.

9 THE WITNESS: Payroll is on page 39 of 44.

10 THE COURT: Page 39 --

11 THE WITNESS: Of 44.

12 THE COURT: Thank you very much.

13 Q. And how much did Dr. Karron -- how much was he paid in that  
14 year, the first year of the grant?

15 A. It shows net salary of \$35,000.

16 MR. KWOK: Your Honor, I think there is a confusion of  
17 the date. I think the witness is looking at the database for  
18 year two. I think Mr. Rubinstein is asking information about  
19 year one. Oh, I'm sorry, I take that back. I take that back.

20 Q. So you show \$35,000. Is that net or gross paid that Dr.  
21 Karron received?

22 A. Net.

23 Q. That's after you deducted 45,000 as disallowed? Is that  
24 what you're saying?

25 A. He also received \$129,000 that he called loans.

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Riley - cross

1 Q. Didn't he have a salary of \$14,000 a month?

2 A. I don't know.

3 Q. Are you aware of the fact that on September 2 -- sorry --  
4 August 2, 2002 Dr. Karron, there was an entry on the books of  
5 CASI showing payment to Dr. Karron of \$61,000 and change?

6 A. For?

7 Q. Salary.

8 A. But --

9 MR. KWOK: What page, your Honor?

10 THE COURT: Yes.

11 MR. KWOK: What exhibit?

12 THE COURT: You're referring us to, Ms. Riley, to page  
13 38 of 49, and the top of the page you have loan and bottom of  
14 the page you have loan repaid.

15 THE WITNESS: Right.

16 THE COURT: And on the next page it says payroll. So  
17 basically the checks -- then you have payroll on the next page.

18 THE WITNESS: Specifically identified as payroll on  
19 the checks when I looked at them in 2004 and 5.

20 THE COURT: According to your analysis of the checks,  
21 the only ones that were made for payroll are the ones on page  
22 39 of 44?

23 THE WITNESS: Yes.

24 THE COURT: And the others.

25 Q. Let me show you these exhibits.

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Riley - cross

1 THE COURT: Well, look, just let me clear this up. We  
2 heard about the \$75,000 loan in October. On what basis did you  
3 determine that the other amounts were loans by Dr. Karron?  
4 Based on the entries of the check or what?

5 THE WITNESS: It's noted in the check memo, some of  
6 them from their check registers or general ledgers.

7 THE COURT: Sorry.

8 THE WITNESS: From their records, from their check  
9 registers or their ledgers.

10 THE COURT: From their ledgers?

11 THE WITNESS: From the ledgers or check registers  
12 provided by CASI to me.

13 Q. Let me show you this document, Defendant's Exhibit P for  
14 identification. Is this the document that was provided to you  
15 as a register by CASI?

16 A. I don't recall.

17 Q. Isn't it a fact on the records of CASI there was an entry  
18 on August 2, 2002 for a payment of salary of \$61,000 and change  
19 to Dr. Karron?

20 MR. KWOK: Objection. The witness says she doesn't  
21 recall.

22 THE COURT: I don't know what she saw because I wasn't  
23 provided with a copy of it. Can I have a copy?

24 I'm going to sustain the objection.

25 All right.

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Riley - cross

1 MR. RUBINSTEIN: I offer in evidence, your Honor, as  
2 P-1, 2, 3, 4, 5, 6.

3 THE COURT: What?

4 MR. RUBINSTEIN: Checks, P-1 through P6.

5 THE COURT: As what Exhibit?

6 MR. RUBINSTEIN: I said it's P-1 through P-6.

7 THE COURT: Oh, Defendant's Exhibits P-1 for  
8 identification through P-6 for identification.

9 Q. I show you these checks and ask you if you recognize these  
10 checks, ma'am.

11 A. Are those -- yes.

12 Q. And are those --

13 MR. RUBINSTEIN: We offer them into evidence, your  
14 Honor.

15 MR. KWOK: No objection.

16 THE COURT: Defendant's P-1 through P-6 admitted in  
17 evidence.

18 (Defendant's Exhibits P-1 through P-6 received in  
19 evidence)

20 Q. Do you know of any additional checks that were given to  
21 doctor -- withdrawn. Those checks have a memo as to payroll  
22 periods, correct?

23 A. Correct.

24 Q. And they are payroll checks payable to Dr. Karron, correct?

25 A. Correct.

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Riley - cross

1 Q. And they start on May 11, 2002, correct?

2 A. Correct.

3 Q. And is it fair to say that on a \$175,000 salary, Dr. Karron  
4 would be paid approximately \$14,000 a month gross?

5 A. Correct.

6 Q. And so if he borrowed \$75,000 in October, within five  
7 months he basically would pay that back, correct?

8 THE COURT: Answer, please.

9 Q. 14 times five is 70, correct?

10 A. Yes.

11 Q. And October, November, December, January, February, by the  
12 end of February he would have basically paid back the 75,000,  
13 correct?

14 A. For the gross, correct.

15 Q. And in May he got a net check for \$5,019.84, right?

16 A. Correct.

17 Q. For a pay period April 1, '02 to April 30, '02, correct?

18 A. Correct.

19 Q. And then --

20 THE COURT: Let me see. How much is that check?

21 MR. RUBINSTEIN: \$5,019.84.

22 In June he gets a check, memo pay period it says  
23 3/1/02 to 5/31/02, in the amount of \$5,002.25.

24 In July he receives a check for the payroll period of  
25 December 1, 2001 to December 31, 2001, and that net amount of

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Riley - cross

1 that check is \$9,288.07.

2 Also in July, on July 5 he receives a check, the  
3 paycheck for the pay period November 1, 2001 to November 30,  
4 2001, in the amount of \$4,756.38. Correct?

5 A. Correct.

6 Q. And the third check on the same day for the payroll October  
7 1, 2001 to October 31, 2001 pay period, he received a check in  
8 the amount of \$5,502.01, correct?

9 A. Yes.

10 Q. And then he received a check on August 2, 2002 for pay  
11 period July 1, '02 to July 31, '02, in the amount of \$5,675.03,  
12 correct?

13 THE COURT: Are those checks included in your  
14 schedule?

15 THE WITNESS: Yes, sir.

16 THE COURT: On page 39 of 44?

17 THE WITNESS: Yes, sir.

18 Q. And where was the rest -- if you pay taxes on those checks,  
19 how much would have been the gross approximately?

20 MR. KWOK: Objection.

21 THE COURT: I don't think she should have to --

22 Q. Well, what happened to the rest of the \$175,000? Did he  
23 receive any additional monies other than the 34, 35,000 that  
24 are reflected in those checks?

25 A. Withholdings would have been paid through the company for

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Riley - cross

1 those checks.

2 Q. Would the withholdings be equal to the amount of the  
3 checks?

4 A. No.

5 Q. Even if they were equal, you only have 70,000. We're still  
6 missing 105,000, right?

7 A. Yes.

8 Q. Did you give him any credit for that missing salary that he  
9 never got?

10 A. He got the loans. He still had more loans.

11 Q. Loans for what?

12 A. Whatever he withdrew the money for.

13 Q. You don't know, right?

14 A. I don't know.

15 Q. The only one we know about is the \$75,000.

16 THE COURT: Are the loans reflected on the books?

17 THE WITNESS: Yes. Well, they say loans. They don't  
18 say what they're for.

19 THE COURT: Or draws?

20 THE WITNESS: The loans say loans.

21 Q. Show me some loans other than the \$75,000 loan. Not in  
22 your books. Show me. Show me a check.

23 MR. KWOK: Objection, your Honor.

24 THE COURT: All she has is the books.

25 MR. RUBINSTEIN: Well, I want the backup.

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Riley - cross

1           MR. KWOK: It's in front of her in that box. Does  
2 Mr. Rubinstein want the witness to dig through that box of  
3 checks?

4           MR. RUBINSTEIN: Well, she did yesterday.

5           THE COURT: Are they readily available?

6 Q. Ma'am, in your schedule of Exhibit 114 --

7           THE COURT: She is looking. You asked for her to show  
8 you.

9           MR. RUBINSTEIN: I'm going to withdraw that.

10          THE COURT: You asked for her to show you those  
11 checks.

12          MR. RUBINSTEIN: I have a quicker way. She can do  
13 that on the government's time. All right?

14 Q. In your schedule Government Exhibit 114 you have salary to  
15 Dr. Karron, correct?

16 A. Yes.

17 Q. Budgeted 175, right?

18 A. Correct.

19 Q. CASI spent \$200,488 on his salary. How did you get that  
20 number?

21 A. By including the withholdings portion of the fringe  
22 benefits as part of the salary of what he received. It  
23 includes the salary, it includes the difference between the  
24 loans he received and the loans he paid, and it includes the  
25 fringe benefits.

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Riley - cross

1 Q. You have fringe benefits listed separately, do you not,  
2 ma'am?

3 A. I just have the items that are --

4 Q. Do you see 59,500 in fringe benefits?

5 THE COURT: She didn't finish her answer,  
6 Mr. Rubinstein.

7 MR. RUBINSTEIN: She just said that the fringe  
8 benefits are included, and I submit, your Honor, that on that  
9 same schedule --

10 MR. KWOK: Objection.

11 MR. RUBINSTEIN: -- the fringe benefits are listed  
12 separately as \$59,000.

13 MR. KWOK: Objection.

14 MR. RUBINSTEIN: \$59,500.

15 THE COURT: You're not a witness.

16 MR. RUBINSTEIN: I'm asking if that's on her schedule,  
17 her exhibit, the Government's Exhibit 114.

18 THE COURT: Find out what you're dealing with and the  
19 exhibit and I will allow your question, but I'm not allowing  
20 that. And your time is up. So this is the last question.

21 MR. RUBINSTEIN: Judge, I'd ask you to give me ten  
22 more minutes.

23 THE COURT: All right, ten minutes, and that is all.

24 MR. RUBINSTEIN: Thank you.

25 Q. You have on Exhibit 114 an expense for Dr. Karron's fringe

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Riley - cross

1 benefits?

2 A. Yes.

3 Q. And is that expense \$59,500? Do you see it on the  
4 schedule? I only have ten minutes.

5 THE COURT: Just give her a minute.

6 MR. RUBINSTEIN: It's her schedule, Judge.

7 THE COURT: You're looking not on the schedule. You  
8 are looking at a chart. Exhibit 114 is the pie chart.

9 MR. RUBINSTEIN: On the bottom is a break-down of  
10 numbers, your Honor.

11 THE COURT: I agree with that, but let's refer to the  
12 document as the pie chart, 114. Now what's your question?

13 Q. My question is: You just testified that the \$200,000 that  
14 CASI spent on Dr. Karron for salary that you have here was  
15 because of fringe benefits, correct?

16 MR. KWOK: Objection.

17 THE COURT: I don't think that is her testimony.  
18 Objection sustained.

19 Q. What was the extra 25,488, what is that attributable to?

20 THE COURT: The 200,488?

21 MR. RUBINSTEIN: Well, it's an additional \$25,488. I  
22 will take silence as an answer and move on.

23 THE COURT: Well, she has to look. You're asking her  
24 to take her pie chart and then give you the backup for the pie  
25 chart, and she has to look to the exhibits to show where that

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Riley - cross

1 is.

2 THE WITNESS: For year one, which number are you  
3 asking about? 25?

4 THE COURT: Are you asking about the 25,000 or the  
5 200,488?

6 MR. RUBINSTEIN: I am asking her how she explains that  
7 Dr. Karron, where the additional -- of her number of 200,000,  
8 with the additional 165,000 that she attributes to Dr. Karron,  
9 where is that?

10 THE COURT: 165,000?

11 MR. RUBINSTEIN: Yeah. We only have checks of about  
12 35,000.

13 THE COURT: Look, stop a second. What figure is  
14 165,000, Mr. Rubinstein, that you're referring to?

15 Q. The checks P-1 through P-6 total about \$35,000, correct,  
16 ma'am?

17 A. Correct.

18 Q. You have a figure CASI spent for Dr. Karron without fringe  
19 benefits of \$200,488?

20 A. Correct.

21 Q. You subtract 35,000 from 200,000, you come up with roughly  
22 \$165,000, right? Yes or no?

23 A. Correct.

24 Q. Do you have any documentation to show \$165,000?

25 A. This chart was prepared from the check register. The

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Riley - cross

1 200,000 comes from the loan -- the difference between the loan,  
2 the loan pay back and the amount of salaries that he received,  
3 plus the withholdings from applicable payroll, withholdings,  
4 that would have been associated with his --

5 Q. The grant was suspended at your request, right?

6 A. Sorry. What?

7 Q. At your request the grant was suspended on June 27, 2003,  
8 correct?

9 A. Correct.

10 Q. What were the monies owed by CASI to NIST suppliers at the  
11 time the grant was suspended?

12 THE COURT: Do you know?

13 A. I don't recall.

14 Q. Did you make any kind of schedule -- they're called  
15 payables, right? If you owe money and you didn't pay your  
16 suppliers, is that what you call them?

17 MR. KWOK: Objection.

18 THE COURT: Let her give an answer before you ask a  
19 second question.

20 Now, what was the question you were asking?

21 MR. RUBINSTEIN: Did she make any list of payables,  
22 monies owed by CASI, to suppliers who supplied product for the  
23 NIST ATP grant.

24 THE COURT: In July 2003.

25 THE WITNESS: I don't recall.

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Riley - cross

1 Q. Do you know after the grant was suspended whether or not  
2 Dr. Karron invested additional money into the CASI project, yes  
3 or no?

4 A. No.

5 THE COURT: Do you know whether he invested any money  
6 in the CASI project after the grant was suspended?

7 THE WITNESS: No.

8 THE COURT: I amended your question because it called  
9 for two conclusions, Mr. Rubinstein.

10 MR. RUBINSTEIN: Pardon, your Honor?

11 Q. Isn't it a fact -- do you have any documentation that would  
12 show whether or not Dr. Karron contributed any monies after the  
13 grant was suspended --

14 MR. KWOK: Objection, relevance.

15 THE COURT: Objection sustained.

16 Q. Well, when the grant was suspended, did NIST say that he  
17 was short on his contribution?

18 MR. KWOK: Objection.

19 Q. Was the grant -- I will withdraw that.

20 Was the grant suspended because he was short on his  
21 copay portion according to your audit --

22 THE COURT: In?

23 Q. In June 27, 2003?

24 A. Yes.

25 Q. And in fact were you informed that he contributed \$60,000

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Riley - cross

1 in the beginning of July 2003?

2 THE COURT: You mean after the audit was complete?

3 MR. RUBINSTEIN: No, after the first audit, not the  
4 final audit in December.

5 Q. In June 27 the grant is suspended, he doesn't get anymore  
6 money, right?

7 A. Correct.

8 Q. He's got debts outstanding on behalf of NIST, right?

9 A. Correct.

10 Q. To get the grant restarted he is supposed to pay back  
11 \$54,000, correct?

12 A. I think it was more than that, but he was supposed to pay  
13 back an amount.

14 Q. All right. And is it fair to say he deposited more than  
15 that amount in the CASI account and paid expenses of NIST with  
16 that money after the grant was suspended?

17 MR. KWOK: Objection.

18 THE COURT: Do you know?

19 A. Was he asking me --

20 THE COURT: He is asking you if you know what happened  
21 after the grant was suspended.

22 THE WITNESS: I know that some money was deposited.

23 Q. Now, you told us before that after your audit there is an  
24 appeals process, correct?

25 A. Correct.

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Riley - cross

1 Q. And there is a negotiation on what's allowable and  
2 unallowable, correct?

3 A. Correct.

4 Q. Called a wrap report?

5 A. I'm not familiar with that term.

6 Q. Is it a fact -- was Dr. Karron or CASI ever afforded an  
7 opportunity to have this audit reconciliation?

8 A. No.

9 THE COURT: She said no, and then the court reporter  
10 said no, and then she said no.

11 MR. RUBINSTEIN: I know that it's no. All right?

12 Q. So nobody reviewed your numbers from the ATP grant offices,  
13 right?

14 A. I believe that's probably correct. They get a copy of my  
15 report, so I don't know. I don't know.

16 Q. You told us that they're the ones that should have the  
17 final say-so of what's allowable and what's not allowable in a  
18 grant, right?

19 A. Correct.

20 Q. And what happened here is that the special agents jumped in  
21 on this back in 2003, right?

22 MR. KWOK: Objection.

23 THE COURT: Objection sustained.

24 Q. And they made this from a civil matter into a criminal  
25 matter, correct?

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Riley - cross

1 MR. KWOK: Objection. Objection.

2 THE COURT: Objection sustained.

3 Q. Well, is the audit resolution a civil procedure?

4 A. It's just a procedure.

5 Q. Yeah, where you sit down with the grant officers and

6 discuss whether or not certain expenses are allowed or

7 allowable or not?

8 A. Correct.

9 Q. That never happened here, right?

10 A. Sorry. What?

11 Q. It never happened here?

12 THE COURT: He says that never happened.

13 THE WITNESS: Correct.

14 THE COURT: You never sat down with him?

15 THE WITNESS: Oh --

16 MR. RUBINSTEIN: Is my ten minutes up, Judge?

17 THE COURT: What?

18 MR. RUBINSTEIN: I retire. I'm finished.

19 THE COURT: We will take a luncheon break.

20 Do you have any redirect?

21 MR. KWOK: Very briefly.

22 THE COURT: It's got to be brief. I mean we have to

23 move this case along.

24 MR. KWOK: Very brief.

25 THE COURT: This is terrible. Juror 3 has got her

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8667KAR3

Riley - cross

1 eyes awake all the time, but I keep an eye on her because she  
2 lies back in that chair.

3 All right. The jury is excused until ten after two.  
4 Can I get away with five after two? Let's say five after two.

5 (Jury not present)

6 THE COURT: Is there anything to take up?

7 MR. RUBINSTEIN: No, your Honor.

8 MR. KWOK: No, your Honor, not at this time.

9 THE COURT: Well, let's be back 2 o'clock to take up  
10 something then.

11 MR. EVERDELL: There is one matter. I note that  
12 defendant has introduced CCC. I think there already is a  
13 defense CCC in evidence, so I think we may have to rename that

14 DEPUTY COURT CLERK: I haven't seen them.

15 THE COURT: We have to keep track of these things  
16 because this is a complex situation.

17 THE DEFENDANT: I don't think I've seen any of the  
18 defense exhibits.

19 THE COURT: You have to mark them.

20 (Luncheon recess)

21 (Continued on next page)

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866zkar4

1           A F T E R N O O N   S E S S I O N

2           2:05 p.m.

3           THE COURT: All right, please be seated. Let's bring  
4 in the jury, and the witness.

5           MR. KWOK: Very quick your Honor, hopefully.

6           THE COURT: I'll believe it when I see it.

7           (Jury entering)

8           THE COURT: I think your chair -- those carts are all  
9 in the middle of the jury path.

10          (Jury present)

11          THE COURT: All right, please be seated.

12          Go ahead, Mr. Kwok.

13          MR. KWOK: Thank you, your Honor.

14          (Continued on next page)

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1 REDIRECT EXAMINATION

2 BY MR. KWOK:

3 Q. Ms. Riley, you remember on cross Mr. Rubinstein asking you  
4 questions about meals?

5 A. Yes.

6 Q. And he showed you receipts of every meals that Dr. Karron  
7 had with other people?

8 A. Yes.

9 Q. Ms. Riley, are meals a line item in the CASI budget  
10 submitted to NIST for the grant?

11 A. No.

12 Q. Ms. Riley, you remember Mr. Rubinstein showing you checks  
13 that Dr. Karron wrote to CASI?

14 A. Yes.

15 Q. Let's pull up government Exhibit 114.

16 Ms. Riley, did you take those checks into account in  
17 your analysis for year one?

18 A. Yes.

19 Q. And still, what is the color represented in red there?

20 A. \$268,638.

21 Q. Let's pull up government Exhibit 115. In your --

22 THE COURT: I'm sorry, let me just see -- this is 114?

23 MR. KWOK: 114, your Honor.

24 THE COURT: What is the total amount for what?

25 MR. KWOK: Represented in the red.

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Riley - redirect

1 THE COURT: The rent?

2 MR. KWOK: Red, not rent.

3 THE DEPUTY CLERK: In the red, in the red.

4 MR. KWOK: Color red.

5 THE COURT: Red, oh.

6 Q. Let's turn now to government Exhibit 115?

7 A. Okay.

8 Q. Did you take those checks that Mr. Rubinstein showed you  
9 into account in your analysis for year two?

10 A. Yes.

11 Q. And still what is the dollar amount represented in the  
12 color red on your chart?

13 A. 196,504.

14 Q. Now, Ms. Riley, you remember Mr. Rubinstein also asking you  
15 questions about cost share?

16 A. Yes.

17 Q. And he asked you about the equipment and how it might  
18 relate to cost share?

19 A. Yes.

20 Q. Let's pull up government exhibit 40A, 40A. Let's focus on  
21 line I.

22 Ms. Riley, what information is called for on line I of  
23 government exhibit 40A?

24 A. Cost share.

25 Q. And what information is reflected -- what number is

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Riley - redirect

1 reflected on line I?

2 A. Zero.

3 Q. If we could zoom out of --

4 THE COURT: This is 40A?

5 MR. KWOK: 40A, your Honor.

6 THE COURT: And this is submitted by -- this isn't  
7 your record, this is submitted by CASI?

8 THE WITNESS: Yes.

9 Q. Who submitted this form?

10 A. Yes, CASI submits this form to us.

11 THE COURT: All right.

12 Q. Could we zoom in on the signature block on the bottom of  
13 that? Whose signature appears on the bottom of that form?

14 A. Dr. Karron.

15 Q. Let's go to government exhibit 41A. Let's zoom into line

16 I. Again, what information is called for on line I?

17 A. Cost share.

18 Q. What is the number there?

19 A. Zero.

20 Q. Let's zoom out. Go to the second block. What signature  
21 appears in the bottom?

22 A. Dr. Karron's.

23 Q. Go to 42A. What is the number shown for line I in 42A?

24 A. Zero.

25 Q. And what signature appears on the bottom portion of that

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Riley - redirect

1 form?

2 A. Dr. Karron.

3 Q. Go to 43A, line I?

4 A. Zero.

5 Q. Signature block, what signature appears there?

6 A. Dr. Karron's.

7 Q. Now, Ms. Riley, one last thing. Could you read the  
8 certification above the signature block?

9 A. I certify, to the best of my knowledge and belief, that  
10 this report is correct and complete and that all outlays and  
11 unliquidated obligations are for the purposes set forth in the  
12 award documents.

13 MR. KWOK: No further questions.

14 RE CROSS EXAMINATION

15 BY MR. RUBINSTEIN:

16 Q. When you consulted with Mr. Spitz in December of 2003, did  
17 he discuss with you the meals issue?

18 A. I don't recall.

19 Q. Well, under the budget, isn't it a fact that there is a  
20 category called "others"?

21 THE COURT: This is beyond the scope.

22 MR. KWOK: Objection.

23 MR. RUBINSTEIN: I submit it's not. It was asked  
24 about meals and whether there's a line item in the budget about  
25 meals.

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Riley - recross

1           THE COURT: That is, the scope of the direct did not  
2 have anything to do with meals.

3           MR. RUBINSTEIN: Yes.

4           THE COURT: Just go right ahead.

5           MR. RUBINSTEIN: Your Honor --

6           THE COURT: We have gone through meals already.

7           MR. RUBINSTEIN: I know that.

8           THE COURT: You are instructed not to go beyond the  
9 direct. That is an order of the Court, that is a rule of  
10 trials.

11          MR. RUBINSTEIN: Absolutely, Judge.

12          THE COURT: You are to confine yourself to the  
13 redirect of the government.

14          MR. RUBINSTEIN: Right. But I submit, your Honor, if  
15 you look at the transcript --

16          MR. KWOK: Objection.

17          MR. RUBINSTEIN: I just asking your Honor to look at  
18 the transcript.

19          THE COURT: Don't argue about it. You have an  
20 instruction. If you want a sidebar, you can have it.

21          MR. RUBINSTEIN: Yes, your Honor.

22               (Continued on next page)

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Riley - recross

1 (At the sidebar)

2 MR. KWOK: Your Honor, in my redirect I didn't ask a  
3 single question about the audits. I simply asked a question  
4 about whether line item -- where meals are a line item on the  
5 budget, that's all I asked. I didn't go into audits, I didn't  
6 go to meals, I don't know where he's going. On recross, he's  
7 going to take another hour if we go this way.

8 MR. RUBINSTEIN: With their directs they shouldn't  
9 complain. Your Honor should complain, but not them.

10 All right. They asked about meals, and I'm asking her  
11 whether or not --

12 THE COURT: They didn't ask meals.

13 MR. RUBINSTEIN: Yes, they did. They said is there a  
14 line item for meals.

15 THE COURT: They didn't ask.

16 MR. RUBINSTEIN: They did.

17 MR. EVERDELL: That's all I asked. I did ask that  
18 question, but I just asked --

19 THE COURT: Did you, a line item? I didn't hear the  
20 meals.

21 MR. RUBINSTEIN: So I'm asking if --

22 THE COURT: All right.

23 MR. RUBINSTEIN: I can go into this.

24 THE COURT: I'll allow it.

25 (Continued on next page)

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Riley - recross

1 (In open court)

2 THE COURT: I thought the question was allowed with  
3 respect to Exhibit 140. Is that the exhibit that the question  
4 was asked about? No, not 140. I'm sorry.

5 THE DEPUTY CLERK: 114 and 115.

6 THE COURT: 114 and 115.

7 With respect to 114 and 115, I will allow it.

8 BY MR. RUBINSTEIN:

9 Q. Now, there is a category called others, is there not --

10 A. Yes.

11 Q. -- Ms. Riley?

12 A. Yes.

13 Q. And is it a fact that meals could be classified under the  
14 line item called others?

15 THE COURT: The question isn't whether it could be.  
16 The question is was it.

17 A. It was not.

18 Q. Was it?

19 A. It was not.

20 Q. What was listed under others?

21 A. Auditing services.

22 Q. Pardon?

23 A. Auditing services.

24 Q. And what else?

25 A. Under others? That's all I recall.

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Riley - recross

1 Q. Now --

2 A. I mean for what, for what? On the budget? The budget was  
3 for auditing. Classified -- allowed for others, other cost in  
4 the budget was audit costs. That was the only thing that was  
5 allowed in the budget.

6 Q. There is a category called others. Is there a category  
7 called audits, yes or no?

8 A. No.

9 Q. Is there a category called others, yes or no?

10 A. Yes.

11 Q. And can meals be considered under the category "others" if  
12 it relates to the project?

13 THE COURT: There is a category called audit, isn't  
14 there?

15 THE WITNESS: There's others, yes.

16 THE COURT: Audit I said.

17 THE WITNESS: Oh, it was -- they -- no -- well, on  
18 our, my chart may have a cost, but.

19 THE COURT: A chart has it?

20 THE WITNESS: The chart has --

21 THE COURT: What?

22 THE WITNESS: The chart has that category.

23 THE COURT: Look at the chart, look at the exhibit I'm  
24 talking about when you answer the question. Don't just dream  
25 about something else.

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Riley - recross

1 THE WITNESS: I thought we were talking about budget.

2 THE COURT: Not talking about budget, we're talking  
3 about the exhibit.

4 THE WITNESS: Okay.

5 THE COURT: All right, the question that was asked  
6 was about the exhibit 104 -- 114.

7 THE DEPUTY CLERK: 114.

8 THE COURT: 114.

9 THE WITNESS: 114.

10 THE COURT: And 115, those are the only questions.

11 THE WITNESS: Okay.

12 THE COURT: Now, you got a question, Mr. Rubinstein?

13 MR. RUBINSTEIN: Did we get an answer? That's all

14 I --

15 THE COURT: Well, I don't know what the question was.

16 MR. RUBINSTEIN: Well, the question was could meals  
17 that are had relating to NIST ATP business meetings, can they  
18 be allowable under the budget line others, yes or no.

19 THE COURT: You can ask about 114 and 115, that's all.

20 Q. Well, ma'am, you testified as to 41A, 42A and 43A, correct?

21 THE COURT: Yes, she did.

22 A. Yes.

23 Q. Line I?

24 A. Yes.

25 Q. And is that what you would utilize to make a determination

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Riley - recross

1 that the equipment could not be utilized as a cofunding  
2 contribution?

3 MR. KWOK: Objection.

4 THE COURT: Let me get the exhibit. Objection  
5 sustained. This document was filed by Dr. Karron. She didn't  
6 prepare it. Dr. Karron prepared it.

7 MR. RUBINSTEIN: I asked if she --

8 THE COURT: Go ahead.

9 MR. RUBINSTEIN: If she utilized it.

10 THE COURT: All we're talking about is line I, that's  
11 all.

12 MR. RUBINSTEIN: Yeah, that's what I'm talking about.  
13 Well, all right, Judge.

14 THE COURT: All right, the document was not prepared  
15 by this witness. The document was prepared by Dr. Karron,  
16 apparently. She cannot answer what was in that or should or  
17 should not have been in that line.

18 MR. RUBINSTEIN: That wasn't the question, Judge. The  
19 question was, did she review that to make a determination.  
20 They brought it out on redirect like she had used that to make  
21 her determination.

22 MR. KWOK: Objection.

23 THE COURT: I don't -- objection sustained.

24 Q. What were you asked about 41A, ma'am, by the Prosecutor?

25 MR. KWOK: Objection.

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Riley - recross

1 THE COURT: Objection sustained.

2 MR. RUBINSTEIN: I'm asking her exactly what she was  
3 asked.

4 THE COURT: We all heard what she was asked her.

5 MR. RUBINSTEIN: Objection.

6 THE COURT: She doesn't have to reply to that  
7 question, now go ahead and ask a question if you're going to  
8 ask one or the cross-examination, recross is over.

9 MR. RUBINSTEIN: With all due respect, Judge, could I  
10 have a sidebar?

11 THE COURT: No, you may not at this point. The rules  
12 apply to recross-examination and they're going to be strictly  
13 adhered to, in light of the lengthy lengthy cross-examination  
14 we've already heard.

15 MR. RUBINSTEIN: I'm going to ask for a limiting  
16 instruction to the jury, your Honor, on that comment by your  
17 Court. I think it was, in all due respect --

18 THE COURT: I don't know what to instruct them. All  
19 I'm doing is stating the facts. If you want to have a sidebar  
20 on that, I'll take a sidebar on that.

21 MR. RUBINSTEIN: Yes, your Honor.

22 (Continued on next page)

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Riley - recross

1 (At the sidebar)

2 THE COURT: If I got annoyed enough so I made some  
3 misstatements, I'll correct it, but otherwise the rule is, and  
4 you know it very well, that recross cannot exceed the redirect.

5 MR. RUBINSTEIN: I agree, Judge.

6 THE COURT: The scope.

7 MR. RUBINSTEIN: I agree, Judge. But when the  
8 government, A, brings out is there a line item for meals and  
9 she says no, I think I have a right to ask if it could come  
10 under the category others, that's number one. Number two, when  
11 the government --

12 THE COURT: A line.

13 MR. RUBINSTEIN: -- brings out --

14 THE COURT: The inquiry, I believe, was was there a  
15 meals category or a meals -- a figure for meals in those two  
16 exhibits. She said no.

17 MR. RUBINSTEIN: They were asked specifically, Judge,  
18 whether there's a budget line for meals. That's what they  
19 asked. It's misleading because it doesn't have to be. It  
20 could be under others and I feel I have a right to straighten  
21 it out.

22 THE COURT: You can bring -- you brought that out.

23 MR. KWOK: You went past that already.

24 MR. RUBINSTEIN: You objected to it and you sustained  
25 it.

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Riley - recross

1 THE COURT: We're here to --

2 MR. RUBINSTEIN: Okay.

3 THE COURT: -- based on your wanting me to correct  
4 something that I may have said to the jury.

5 MR. RUBINSTEIN: Yes. The second that -- yeah, that  
6 your Honor suggested that it was inappropriate for counsel to  
7 cross-examine the length he did, particularly in view of the  
8 fact that you limited me to --

9 THE COURT: It's not --

10 MR. RUBINSTEIN: -- in the kind and I don't think that  
11 the jury -- that counsel has an absolute right to cross-examine  
12 just as the government has a right --

13 THE COURT: You got --

14 MR. RUBINSTEIN: -- to show the same exhibits through  
15 every witness, show the same exhibit on the screen. I  
16 shouldn't be -- and as to the letter I in 40, in the A's  
17 exhibits in the 40s, it says total --

18 THE COURT: The cost share.

19 MR. RUBINSTEIN: Share. So they are suggesting that  
20 because there's nothing in here that she couldn't consider it.  
21 She never considered this document, Judge. She never  
22 considered it.

23 MR. KWOK: I never suggested that. I just asked her  
24 what the document says.

25 THE COURT: She --

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Riley - recross

1 MR. RUBINSTEIN: What was the purpose of it?

2 THE COURT: To show there was no dispute.

3 MR. RUBINSTEIN: Pardon?

4 THE COURT: To show there was no dispute about that  
5 item.

6 MR. RUBINSTEIN: But she considered it.

7 MR. KWOK: Who said she considered --

8 THE COURT: No one said she considered it.

9 (Continued on next page)

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Riley - recross

1 (In open court)

2 MR. RUBINSTEIN: Can I ask the Court Reporter if that  
3 was answered, that question about the meals was asked answered?

4 THE COURT: No.

5 MR. RUBINSTEIN: Could I ask it again?

6 THE COURT: You can ask another question, not that  
7 one.

8 MR. RUBINSTEIN: You said at the sidebar I could ask  
9 it.

10 THE COURT: What?

11 MR. RUBINSTEIN: You said at the sidebar, I could ask  
12 it.

13 THE COURT: I didn't say that.

14 BY MR. RUBINSTEIN:

15 Q. In the exhibits, government Exhibit 114 --

16 THE COURT: Go ahead.

17 Q. The government asked you questions about 114, correct?

18 THE COURT: Yes.

19 Q. By your --

20 THE COURT: If it's within the scope of the redirect.  
21 We're not going to go over all of 114 and start all over again.

22 MR. RUBINSTEIN: I don't intend to, Judge.

23 Q. By your red portion of the circles, Dr. Karron owes three  
24 times the amount of money that he received, right; is that  
25 correct?

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Riley - recross

1 MR. KWOK: Objection.

2 THE COURT: I don't understand the question. You want  
3 to point to something in Exhibit 114 or 115, you can, but the  
4 questions you're asking call for computations.

5 Q. How much, according to these red circles on Exhibit 114 and  
6 115, how much does Dr. Karron, according to you, owe NIST ATP?

7 A. According to the red circles? It would be 268,000 plus --

8 Q. Pardon?

9 A. -- 196.

10 Q. What?

11 A. 268,000 plus 196,000 is how much CASI would owe back.

12 MR. RUBINSTEIN: I'm sorry, Judge.

13 Q. Did you say 196?

14 THE COURT: Talking about what CASI owes or what Dr.  
15 Karron owes?

16 THE WITNESS: CASI, right. Dr. Karron would be --  
17 what CASI owes.

18 Q. And what does Dr. Karron owe?

19 THE COURT: What's the rest of your question? You're  
20 asking what Dr. Karron owes, according to Exhibit 114?

21 MR. RUBINSTEIN: 115.

22 THE COURT: 115?

23 MR. RUBINSTEIN: Either one.

24 THE COURT: Which one?

25 MR. RUBINSTEIN: They're related. I can't tell.

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Riley - recross

1 Q. I want to know between these two exhibits, if we could find  
2 out how much she claims Dr. Karron has in unallowable expenses?

3 A. This shows the CASI unallowable expenses.

4 THE COURT: Just Dr. Karron, just Dr. Karron, that's  
5 all you were asked. You're looking at Exhibit 114.

6 MR. RUBINSTEIN: I have no further questions, your  
7 Honor.

8 MR. KWOK: Two questions, your Honor, two questions.

9 THE COURT: How are you going to be in the scope? All  
10 right.

11 MR. KWOK: Within the scope.

12 THE COURT: It's got to be within the scope.

13 REDIRECT EXAMINATION

14 BY MR. KWOK:

15 Q. Can you pull up government Exhibit 110B, page seven?

16 THE COURT: Wait a minute. Where are we going now?  
17 It's a different exhibit. That's not within the scope. It's  
18 not allowed.

19 MR. KWOK: Final question.

20 Q. Ms. Riley, in your review of all the checks, who signed all  
21 those checks for CASI?

22 MR. RUBINSTEIN: Objection, your Honor, beyond the  
23 scope.

24 THE COURT: Objection sustained.

25 All right. You're excused. Next witness.

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8AKMKARS

Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

07 Cr. 541 (RPP)

5 DANIEL B. KARRON,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 October 20, 2008  
2:30 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.,

12 District Judge

13  
14 APPEARANCES

15 MICHAEL J. GARCIA

United States Attorney for the  
Southern District of New York

16 STEVE KWOK

17 CHRISTIAN EVERDELL

Assistant United States Attorneys

18 RUBINSTEIN & COROZZO

Attorneys for Defendant

19 BY: RONALD RUBINSTEIN

20  
21  
22 ALSO PRESENT: KIRK YAMATANI  
23 RACHEL ONDRIK

8AKMKARS

Sentence

1 (Case called)

2 MR. KWOK: Good afternoon, your Honor, Steve Kwok for  
3 the government. With me at counsel table is Chris Everdell.

4 THE COURT: Good afternoon, Mr. Kwok and Mr. Everdell.

5 MR. RUBINSTEIN: Good afternoon, your Honor, Ron  
6 Rubinstein for the defendant. I have to apologize. I thought  
7 it was 2:30, the sentence. It must have been a senior moment.

8 THE COURT: I have a presentence report. The latest  
9 one is dated October 7, 2008. Has the defendant seen the  
10 presentence reports, including the latest one, October 7, 2008?

11 MR. RUBINSTEIN: Yes, your Honor.

12 THE COURT: He has read them?

13 MR. RUBINSTEIN: Yes, your Honor.

14 THE COURT: Are there any changes to be made?

15 MR. RUBINSTEIN: No. Except for the objections we  
16 have --

17 THE COURT: Except for the objections that you have in  
18 your letter of October 13 and also in a letter received Friday,  
19 October 17, 2008, those two letters to the Court?

20 MR. RUBINSTEIN: That's correct, your Honor.

21 THE COURT: The government sent us a letter dated  
22 October 17 also. I have not received any response by the  
23 government to your letter of October 17.

24 MR. KWOK: The government did not submit a response to  
25 the latest letter.

8AKMKARS

Sentence

1 THE COURT: You're willing to proceed on that basis?

2 MR. KWOK: The government is ready to proceed.

3 THE COURT: Then I guess the best way -- I don't know  
4 how the parties think the best way to proceed, but it would  
5 appear to me that the best way to proceed is by considering  
6 Mr. Rubinstein's letter of October 17, which disputes the  
7 computation of loss contained in the presentence report and in  
8 the government's letter.

9 I might say that I've had some concerns about the loss  
10 computation. It's not clear to me that a failure to get  
11 approval of expenditures from the grant officer amounts to the  
12 same as an intentional misapplication of funds. And to the  
13 extent that we have here in this case, as I understand it, the  
14 final budget as approved in December 2001, and subsequent to  
15 the applications to amend the budget were not approved. So the  
16 requisite documents that the Court has to examine of the budget  
17 contained in -- is it Exhibit 12?

18 MR. KWOK: Your Honor, I think the last approved  
19 budget is the budget attached to Government Exhibit 22. It's  
20 the third page --

21 THE COURT: It's Exhibit 12. Just a second. Exhibit  
22 12 is the original budget that Dr. Karron signed. Then there  
23 is Exhibit 20. 21 was just an administrative contact change.  
24 Exhibit 22 contains the final budget approved -- amended budget  
25 approved by the agency.

8AKMKARS

Sentence

1           So I have difficulties. For instance, looking at  
2 Exhibit 20 and 22 and the fringe benefits being allowed at 34  
3 percent of salary, as I see it in the documents. I have  
4 difficulty also with the tabulation contained in Government  
5 Exhibit 114 and 115 because they are just rough calculations,  
6 as I see it. I don't know who compiled them, but I gather it  
7 was Ms. Riley, but we never went into the detail about, for  
8 instance, the statement in the tabulation that Dr. Karron's  
9 salary budgeted at 175, various cash. He spent 200,486,  
10 according to that tabulation. Those amounts, as I saw them,  
11 err were salary. They involved loans made which someone, I  
12 don't know whom, I presume Ms. Riley, determined the equivalent  
13 of salary.

14           As I alluded to earlier, the fringe benefits figure in  
15 this tabulation -- I'm looking at 114 -- says that Dr. Karron  
16 didn't spend \$40,337 in fringe benefits, and yet in the same  
17 tabulation it says that the fringe benefits were not allowed  
18 and spent \$4,081. That whole scenario of fringe benefits is  
19 somewhat illusive to me.

20           The testimony, as I recollect it, was CASI, the  
21 corporation, did not have a formal benefit plan and they were  
22 endeavoring to compile one during the time of the grant. And  
23 instead what Dr. Karron did was to pay benefits just as he was  
24 accustomed to paying them, for whatever medical expenses the  
25 various employees had for their wives. I have some difficulty

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1 in, 1, finding that there was criminal intent with respect to  
2 these expenditures, which are all on Government 114, and with  
3 the manner in which those overexpenditures were computed. It  
4 seems to me this is just a rough calculation and not something  
5 that a Court could rely on in a criminal case. I'll hear from  
6 you. That's my assessment of that proof.

7 MR. EVERDELL: Your Honor, I think; in fact, I know  
8 114 and 115 are based on Ms. Riley's underlying analysis.

9 THE COURT: The spreadsheets.

10 MR. EVERDELL: Yes, the spreadsheets.

11 THE COURT: But it doesn't meet it because in her  
12 spreadsheet she doesn't have any payment like \$248,000 worth of  
13 salary in year one.

14 MR. KWOK: Your Honor, she does. That number is the  
15 net transfers.

16 THE COURT: I've looked at salary, I think.

17 MR. KWOK: Including the tax withholding, I believe is  
18 the testimony that she testified to. When you take into  
19 account all the money that Dr. Karron took out from CASI, minus  
20 the amount that he paid back --

21 THE COURT: That isn't salary. We are talking about  
22 salary. I don't see salary. There is nothing like salary in  
23 those documents that equals 248 -- \$200,488.

24 MR. KWOK: Salary is just a heading. What she meant  
25 by this is money that defendant took, pure money, not in terms

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1 of expenditure; cash that he took from CASI, whether in the  
2 form of quote unquote loan or whether in terms --

3 THE COURT: Show me. She has no tabulation putting  
4 114 into context with her 110, Exhibit 110.

5 MR. KWOK: If your Honor could look at Government  
6 Exhibit 110.

7 THE COURT: I did look at Exhibit 110.

8 MR. KWOK: Page 38.

9 THE COURT: I have it here. I don't know that I have  
10 it here.

11 MR. KWOK: Page 38 of 44.

12 THE COURT: I guess we will have to get 110, because I  
13 don't think I have it here, but I'm fully familiar with it. I  
14 think it's in Mr. Rubinstein's submission, as a matter of fact.

15 MR. KWOK: That page shows money going to the  
16 defendant and money coming from the defendant. So taking --

17 THE COURT: What page are you referring to? Maybe  
18 it's in Mr. Rubinstein --

19 MR. KWOK: 38 of 44.

20 THE COURT: He has payroll. Looking at 13 of 44?

21 MR. KWOK: Page 38 of 44.

22 THE COURT: That's loan and loan repay. That's not  
23 salary.

24 MR. KWOK: If you look at the memo line, it is salary.  
25 Look at, for example, the third check, per check register,

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1 salary advance.

2 THE COURT: That one she treated as a loan.

3 MR. KWOK: These are expressed in a spreadsheet as  
4 loans, but they are all money going to the defendant.

5 THE COURT: I understand. It's just not salary.

6 MR. KWOK: You can give it whatever label you like,  
7 but the bottom line is, the defendant took from the company  
8 this much money which added to 188.

9 THE COURT: I don't doubt that's what your  
10 calculations are.

11 MR. KWOK: If I can just correct a misimpression,  
12 Government Exhibit 114 is not a rough calculation. It's not a  
13 guess. It's based entirely on Government Exhibit 110 which, in  
14 turn, is based entirely on the bank records that she reviewed.

15 THE COURT: They are certainly not in those records, a  
16 showing of \$200,488 in salary.

17 MR. KWOK: If I can explain how she got that number.

18 THE COURT: It's denominated salary. It's a table  
19 saying salary. I don't care how she got the number.

20 MR. KWOK: But that doesn't really affect the loss  
21 amount. You can label it and give it whatever label you want.  
22 But at the end of the day -- let me back up one step. The  
23 grant says Dr. Karron can take from the grant for his own use,  
24 whether we call it salary or compensation for efforts that he  
25 put into the grant, \$175,000. That's the amount -- the portion

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1 of the pie that he can get from the grant, \$175,000.

2 THE COURT: He can get a salary of 175,000 is what it  
3 says in the budget, plus 34 percent for fringe benefits.

4 MR. KWOK: If he took from the grant money in addition  
5 to \$175,000, putting aside fringe benefit for a second, any  
6 amount above that is a disallowed amount, whether you call it  
7 excess salary or call it a loan that never gets paid back. It  
8 doesn't really matter. At the end of the day, the budget says  
9 \$175,000 and no more. If you take more than that, the first  
10 dollar above \$175,000 is disallowed. Whether you call that  
11 excess salary or loan, it doesn't really matter.

12 THE COURT: I'm not dealing with ifs. I'm dealing  
13 with what the record shows. This doesn't show what the records  
14 show as far as salary goes.

15 MR. KWOK: It shows that, just for simplicity, she  
16 doesn't want to create that many different categories. Salary,  
17 loan.

18 THE COURT: She has got a salary category. She shows  
19 it. Go on a couple of pages. Payroll, next page, \$35,293.58.

20 MR. EVERDELL: Your Honor, also, to bear in mind with  
21 this, these entries on the spreadsheet are based on how  
22 Dr. Karron himself characterized things in the documents. So  
23 we have checks here for pay periods that are quote unquote  
24 payroll checks for salary. However, he called other things  
25 loans or other things like that.

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1           Now, Lynn Riley, in doing this analysis, put those  
2 together in the same category because as Mr. Kwok was saying,  
3 it was money paid from CASI to Dr. Karron. If he is allowed a  
4 payroll, a salary of \$175,000, it doesn't necessarily matter  
5 how the defendant himself characterizes those payments to  
6 himself. Whether he calls them payroll checks or whether he  
7 calls them loans, it's still a payment to him personally from  
8 CASI funds. So her object, I think in doing it this way, was  
9 to sweep together those things which were direct payments from  
10 the company to Dr. Karron.

11           THE COURT: I don't dispute that. But the tabulation  
12 is not something that I can go along with. It is not salary.

13           MR. KWOK: We have no problem with that. If you want  
14 to call it salary/loans or just simply money to Karron, excess  
15 money to Karron, it doesn't really affect the loss amount  
16 because at the end of the day the loss amount is simply  
17 arithmetic, what he took from CASI minus what he is supposed to  
18 get under the grant, which is \$175,000. We have no problem, if  
19 it makes things clearer, instead of calling that salary, we  
20 could call that, simply, excess money to Dr. Karron.

21           THE COURT: You see what he did was -- I think it is  
22 borne out by the defendant's papers to some degree -- is he  
23 took a very low salary to pay back the loans. Is that a fair  
24 statement?

25           MR. EVERDELL: Your Honor, that fact that you just

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1 said, the fact that he didn't take his full salary, is taken  
2 into account --

3 THE COURT: I didn't say that. I want to know whether  
4 you're disputing what I just said.

5 MR. EVERDELL: What I agree with is that, yes, the  
6 defendant did not take his full salary in the sense that when  
7 you look at salary in checks, they are less than the \$175,000  
8 of quote unquote salary.

9 THE COURT: You saw there was less withholding, right?

10 MR. EVERDELL: But he paid himself in other ways in  
11 things he do did not characterizing as salary.

12 THE COURT: Was there less withholding or not? You  
13 better confer.

14 MR. EVERDELL: Your Honor, apparently what happened  
15 was, he wasn't characterizing anything -- there was no  
16 withholding until an accountant came in towards the end of year  
17 one and said, you have to call these things payroll, you have  
18 to take your salary and then you have to calculate withholding.  
19 And that account went back retroactively and looked at these  
20 payments and did the withholding retroactively with all these  
21 payments to him which had not been characterized.

22 THE COURT: There are documents appended to the  
23 defendant's papers which indicate that the withholding was  
24 taken timely. That's not borne out by what you say, showing  
25 Mr. Rubinstein's letter of Friday. Where did I put it? He has

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1 got documents showing money being withheld to calculate salary.

2 MR. KWOK: Which page are you looking at, your Honor.

3 THE COURT: I'm trying to find the letter now.

4 Attached to it, if you look, it's about ten pages in. It shows  
5 the salary, August 2, 2002, salary. It shows outstanding  
6 salary of \$61,918; federal withholding tax, minus 17,104;  
7 social security deduction, 2,091; Medicare and employee 462.81.  
8 New York withholding, New York City resident also. It's all in  
9 there. He also has one for the pay period 7/01/2002. Maybe  
10 that's the same.

11 MR. KWOK: Are you looking at this page?

12 THE COURT: Yes, I believe so. It has a check at the  
13 top.

14 MR. EVERDELL: Your Honor, I think this may actually  
15 reflect what we are talking about. If you look at check No.  
16 10401. Is that the page you're looking at?

17 THE COURT: Yes.

18 MR. EVERDELL: That looks like it was paid out on  
19 August 2, 2002, which is towards the end of year one of the  
20 grant. If you look at the spreadsheet that Ms. Riley created,  
21 it shows that the first actual paid check that he got was in  
22 May of 2002; again, sort of towards the end of year one of the  
23 grant. This is, as we are getting towards the end of year one,  
24 where Dr. Karron is being told that needs to pull out  
25 withholding. I don't think this contradicts what we were

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1 saying before.

2 THE COURT: It does contradict what was said. What  
3 you said is not consistent with what you're saying now. That's  
4 the trouble with these analyses. They are fine as far as they  
5 go, but they do not tell the story.

6 Anyway, there are, similarly, prescriptions, first  
7 item in Mr. Rubinstein's letter. I don't think that the item  
8 is prescriptions. I think the item is other and it included  
9 other matters such as bank processing, consultants, lawyers,  
10 and bookkeeping.

11 MR. EVERDELL: Your Honor, if I can just step back for  
12 one second and just talk about the general position of the  
13 government on loss, which is that unless it's specifically  
14 budgeted for -- that it has been preapproved in a budget or has  
15 had subsequent approval authority from NIST, or whatever  
16 expenditure it may be, that it's overbudget or an item in a  
17 category that is not a budgeted category, that constitutes a  
18 loss to the government. The reason why is --

19 THE COURT: It has to be -- it seems to me it has to  
20 be a loss as to which there was criminal intent.

21 MR. EVERDELL: Your Honor, I think --

22 THE COURT: In order for there to be an intentional  
23 misapplication of funds. You have to have criminal intent  
24 here. The fact that the government lost money on the grant or  
25 the money wasn't expended properly does not necessarily mean

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1 that there was criminal intent involved in all those  
2 expenditures.

3 MR. EVERDELL: Your Honor, according to the  
4 guidelines, the guidelines commentary, when you're looking at  
5 government benefits, you are supposed to look at what the  
6 intended use for the money was. For loss amount you look at  
7 whatever was diverted to in unintended use. It's the  
8 government's position that with this money that was given out,  
9 it came with a lot of very specific spending rules and those  
10 rules were clear and set forth. So that is the intended use of  
11 the money.

12 We handled this money such that you would spend it in  
13 accordance with these rules and that included the budgetary  
14 rules, the prior approval rules, all of the other spending  
15 rules that came attached to the grant. So that when money is  
16 diverted elsewhere, when it is not part of an approved category  
17 or overbudgeted category, that's not an intended use of the  
18 money. That is not an intended use of the money because,  
19 otherwise, why not just give away the grant money with no rules  
20 and say, okay, here is a block of money for you to use as you  
21 see fit. We won't ask you how you're spending it. Come back  
22 in a year or so and tell us the progress you've made on your  
23 grant. I'm sure there are grants that probably do operate that  
24 way, but that's not this one. This one wanted to keep a very  
25 close leash on how this money was spent, they wanted to approve

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1 everything that was spent and see all of the expenditures  
2 beforehand so that they were on board.

3 THE COURT: All the expenditures that were budgeted.

4 MR. EVERDELL: They wanted to see a budget first, yes,  
5 and anything that was not in that budget or over that budget,  
6 with the exception of the 10 percent rule that we are all  
7 familiar with, had to be approved. The reason why they do that  
8 is because, as defense counsel said many times in his own  
9 submissions, this is a type of grant where the government is  
10 actually very involved. So they want to keep a tight leash on  
11 how this money is spent.

12 Given that that is the posture of this grant, how the  
13 money is supposed to be spent, that is the intended use of the  
14 money, to be spent according to budgeted items or items that  
15 have been preapproved by NIST. So it's the government's  
16 position that when you go outside of those categories or go  
17 over budget on one of the approved categories, that still  
18 constitutes a loss to the government because they have not been  
19 able to exercise the control that they meant to exercise with  
20 instituting these grant rules and these spending rules.

21 THE COURT: Look. Let's go right to an item that  
22 bothers me, fringe benefits. They were approved at 34 percent  
23 of salary. No one said what constitutes a valid, as far as I  
24 could find in the papers in the court, what was a valid fringe  
25 benefit and what wasn't. How can I have any confidence that

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1 not approved fringe benefits of \$4,000 is something that is a  
2 willful disregard of the rules?

3 MR. EVERDELL: Your Honor, there are a couple of  
4 things with fringe benefits which is, I believe, how this was  
5 calculated. We heard testimony that there was no plan in  
6 place.

7 THE COURT: I heard that, but there was no plan in  
8 place from the beginning. You only found that out at a certain  
9 point. No one went and checked the group out or anything in  
10 advance. It says fringe benefits. The testimony is, he had a  
11 cafeteria plan or whatever it was.

12 MR. KWOK: Your Honor, if I may, I think the  
13 testimony --

14 THE COURT: And anything and everything could be  
15 expended in the way of fringe benefits to himself and members  
16 of the family and for the employees. The government may come  
17 back with, oh, it wasn't in the plan, so, therefore, it  
18 shouldn't be allowed, but there is no warning to the person  
19 there. I can't see the criminal intent there.

20 MR. KWOK: The defendant was certainly told  
21 repeatedly --

22 THE COURT: The government may have lost the money,  
23 but I can't see any criminal intent.

24 MR. KWOK: The intent is when he asked a question and  
25 was told no and went ahead and did it anyway. It was in the

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1 documents --

2 THE COURT: He didn't ask any question about medical  
3 benefits, as far as I know, from the record.

4 MR. KWOK: If I could just address your Honor's  
5 question about amount. The amount reflected on this chart is  
6 simply the amount over budget because he took more salary  
7 because fringe benefits is a percentage of salary. So it's  
8 calculated as a fixed percentage of salary. So because he took  
9 more from CASI than the amount that he was allowed, namely,  
10 \$175,000, the amount we just allowed him is an amount of \$4,000  
11 or so. It is simply an amount over budget because he took more  
12 in dollars --

13 THE COURT: He underspent budget through those fringe  
14 benefits by \$4,000 it says right above it. Look at that. This  
15 is a mess.

16 MR. EVERDELL: Your Honor, I think we can make this  
17 much simpler. Let me see if I can do this. Even if you look  
18 at just the categories that were nonbudgeted categories, we are  
19 not talking about fringe benefits anymore, we are not talking  
20 about even equipment overexpenditures, we are not talking  
21 anything that was actually a budgeted category that had been at  
22 least somewhere approved by NIST before.

23 If we are talking about everything else, that is,  
24 rent, utilities, cleaning, meals, capital improvements, or  
25 these other expenses which were actually not listed in the

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1 category other under the budget, we are already talking about  
2 for years one and two of the grant, we are already talking  
3 about a loss amount, under my calculation, is over \$172,000. I  
4 think --

5 THE COURT: What figures did you use in the first year  
6 of the budget to get 172,000?

7 MR. EVERDELL: I just added up in years one and years  
8 two, so this would be 114 and 15.

9 THE COURT: Which items are you adding up?

10 MR. EVERDELL: I'm adding up rent, which is \$60,000 in  
11 year one; I'm adding up utilities, which is 16,341 in year one.  
12 I'm adding up capital improvements.

13 THE COURT: Rent. You're adding up after rent what?

14 MR. EVERDELL: Rent was first, 60,000.

15 THE COURT: Utilities.

16 MR. EVERDELL: Utilities was second.

17 THE COURT: There was some testimony on utilities. He  
18 got an approval.

19 MR. EVERDELL: Your Honor, I don't think there was  
20 ever testimony that he got a prior approval for utilities. In  
21 fact, he was told repeatedly that utilities were not allowed.

22 THE COURT: The difference between the utilities for  
23 the apartment before and after the upgrade for air conditioning  
24 and for the machinery --

25 MR. EVERDELL: I think the only testimony we had on

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1 the record is that he tried to get an approval for the  
2 utilities, but he never received one.

3 THE COURT: Mr. Rubinstein's quotes a utilities figure  
4 using Mr. Benedict's testimony at 1057. I can't find it. Here  
5 it is, 1057.

6 MR. EVERDELL: I'm looking at the page he cited. Here  
7 it just says -- his question is, this is Mr. Rubinstein's  
8 question, and he is questioning --

9 THE COURT: And the discussions were that if he could  
10 indicate the fact that there was an increase, that they could  
11 be classified as direct expenses, not indirect expenses.

12 MR. EVERDELL: It says the discussions were, right,  
13 that if he could demonstrate the fact that there was an  
14 increase, that they could be classified as direct expenses, not  
15 indirect expenses. But there was never any approval of this.  
16 So at this point none of the testimony here is talking about  
17 any approval of any additional utilities, expenses, or anything  
18 like that.

19 THE COURT: Sounds like approval, but not written  
20 approval.

21 MR. EVERDELL: He is talking to Bob Benedict. Bob  
22 Benedict, I think, is a witness here who is the finance  
23 manager. We are not talking to the people at NIST, who  
24 actually made the approval, such as Hope Snowden. If I recall  
25 correctly, Hope Snowden's testimony about utilities was simply

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1 that there were lots of conversations that she had with the  
2 defendant himself and with others about whether or not grant  
3 funds could be used for utilities, and she said no.

4 THE COURT: Where is this?

5 MR. EVERDELL: The cites to the record?

6 THE COURT: Yes.

7 MR. EVERDELL: Your Honor, I'm afraid I don't have  
8 them --

9 THE COURT: This does say the witness summarizes his  
10 testimony at the end of the page. The incremental amount of  
11 additional expense caused by the grant could be classified as  
12 direct expense and not indirect expense. Direct expenses are  
13 allowed, regardless of what they are. Indirect expenses are  
14 not allowed.

15 MR. EVERDELL: I think that that quote just says right  
16 there that they are talking about a possibility, but a  
17 possibility that was never actually approved. And a  
18 possibility that was never actually budgeted. So --

19 THE COURT: It suggests not approved in writing. I  
20 have seen that. I agree with that. But it sounds as if it was  
21 approved orally.

22 MR. EVERDELL: I don't know if I read that as that.  
23 Maybe it's Mr. Benedict's understanding of what he could  
24 possibly get approved under the rules.

25 THE COURT: I think that's a little bit -- the point

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1 is that the criminal intent of the defendant is important here.  
2 And if he was proceeding on that basis, that seems to me -- I  
3 have reason to -- it seems to me that that amount is an amount  
4 that should not be considered in the loss calculation.

5 MR. EVERDELL: Your Honor, I think I have to  
6 respectfully disagree with that. My colleague, Mr. Kwok, has  
7 pointed me to the part in the record. This is Hope Snowden's  
8 testimony on page 256 of the record where she is talking about  
9 her conversations with I believe it's Dr. Karron and  
10 Mr. Gurfein about expenses. And the question was:

11 What questions did he ask you, if any, during those  
12 conversations?

13 And the answer is: Was he allowed to pay for rent and  
14 utilities with the ATP federal-funded grant.

15 "Q. And rent for what, rent utilities for what?

16 "A. For the condo in which at this point, I guess, CASI, the  
17 company, was being housed.

18 "Q. And whose condo was that?

19 "A. Dr. Karron's condo.

20 "Q. What was your response to the question? Can rent and  
21 utilities be paid for with ATP funds?

22 "A. No. They are unallowable costs."

23 THE COURT: I understood that testimony. That comes  
24 well preceding Benedict's testimony, it comes well preceding  
25 the work for the apartment for the air conditioning, and that's

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1 what caused the utilities to go up and that's after the time  
2 that Snowden is talking about, as far as I can see.

3 MR. EVERDELL: Let's just do this then, your Honor.

4 THE COURT: I've got to be --

5 MR. EVERDELL: Let's do this. Let's set aside for the  
6 moment the issue of whether that \$4,595 should or should not be  
7 included in the loss amount.

8 THE COURT: According to Mr. Rubinstein, it's not  
9 4,000.

10 MR. EVERDELL: I was looking at page 2 of his letter.

11 THE COURT: 16,341, as I understand it. The utilities  
12 prior were 4595, prior to the project.

13 MR. EVERDELL: I believe that's 16,341 is what the  
14 government is claiming is the utilities amount for year one.

15 THE COURT: Maybe you're right. That's the  
16 government's claim, not 16,000. He claims --

17 MR. EVERDELL: He claims that the loss is only 4,595,  
18 which is the amount of the increase, he says.

19 THE COURT: That's the prior amount of utilities, not  
20 the increase. The difference should be not a loss.

21 MR. EVERDELL: I apologize, your Honor. He's claiming  
22 the difference between the two should be not included in the  
23 loss.

24 But setting that aside for the moment, again, if you  
25 add up the categories again that were nonbudgeted expenses,

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1 even leaving that issue aside, I guess let's just say that that  
2 is almost \$12,000, not quite, of difference.

3 If you go to the next category, which is capital  
4 improvement, in year one is 11,248. Again, this has no --  
5 there is nowhere in the budget where this stuff is talked  
6 about. There is no prior approval from NIST for this sort of  
7 thing. Mr. Benedict is using the money, same which he does for  
8 cleaning and meals, to do whatever he feels like he wants to do  
9 with it, and he's spending it on outside budget categories.

10 THE COURT: Let's deal with capital improvements.  
11 They claim that this should be more profited by the site  
12 preparation.

13 MR. EVERDELL: But even site preparation isn't a  
14 budgeted category.

15 THE COURT: I don't know that it is.

16 MR. EVERDELL: It's not, according to the exhibits.  
17 Basically, what the defense counsel has tried to do in this  
18 submission is take every possible expenditure that he can think  
19 and try to claim that if it had some tangential or arguable  
20 benefit to the research, then it can't be qualified as a loss.  
21 That simply can't be workable, your Honor, because almost every  
22 single expenditure has some benefit to the research. You just  
23 can't work that standard. It's unworkable.

24 So what we decided and what our loss calculation and  
25 theory is about is whether or not it's in budget because that

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1 is clearly what the intended use of the money was. We give you  
2 this money so that you can spend it according to the rules, and  
3 they were very clear about that. There was lots of testimony  
4 about how the rules were supposed to be followed, how they  
5 explained the rules to them, how they had to adhere to their  
6 budget, and for good reason, and how they needed approvals for  
7 things that were outside of the budget.

8 So while I understand that certain things that the  
9 defendant is claiming may arguably have benefited the research  
10 in some way, that's simply not the standard we can work with,  
11 because then there would be no loss at all, it would seem like.  
12 Even meals. People have to eat in order to conduct research,  
13 but you can't spend federal grant money to do it. Yes, you  
14 need to clean things in order to have your house cleaned, but  
15 you can't spend federal grant money to do it. It has to be  
16 budgeted if you're going to do it that way.

17 Things like site improvement, capital improvement,  
18 whatever it is, things that may sound even arguably better than  
19 meals and cleaning in terms of how it might affect the  
20 research, it doesn't count because it's not budgeted. There is  
21 a good reason for that. The government needed to understand  
22 and approve all the expenditures related to the research,  
23 whether it was because it was in a budget or because someone  
24 came to them later and asked for approval for something that  
25 was outside of the budget.

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1 THE COURT: Let's not quite put it that way because  
2 there is this 10 percent rule that they have got in there.

3 MR. EVERDELL: Yes, your Honor. If you look at 114  
4 and 115, down at the bottom right-hand corner you see the pie  
5 chart at the bottom right-hand corner which has -- I don't know  
6 if you can see it.

7 THE COURT: I can see the pie chart.

8 MR. EVERDELL: The slice is the 10 percent. If you're  
9 inclined -- it's our argument that the 10 percent rule, the  
10 money still has to go from somewhere. Even if you are going to  
11 exclude the 10 percent from the calculation, it's still going  
12 to rise far above the level that I think your Honor is  
13 considering.

14 Not only that, 10 percent can't be used for new  
15 categories. I'm talking simply now about categories that are  
16 not in the budget. The 10 percent rule only applies to  
17 categories that are already in the budget, and you may  
18 reallocate funds within those preapproved categories.

19 So with respect to the money I'm talking to you about  
20 now, the ones that are not budgeted categories at all, the 10  
21 percent rule does not even apply to that. So even if you add  
22 it up, all these out-of-budget, nonbudgeted categories, you  
23 would still get to a loss amount, under my calculation, over  
24 \$172,000 in loss.

25 If your Honor subtracted the 12,000 or so from the

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1 utilities, we are still over the 120,000 threshold and  
2 guidelines which makes it -- I believe, it's a level -- I want  
3 to check -- it bumps it down two levels from the calculation  
4 that's in the PSR. But it's still a total offense level of 18  
5 as opposed to 20, using that calculation.

6 THE COURT: The PSR originally was more than 200,000.

7 MR. EVERDELL: Your Honor, we still think that the  
8 calculation in 114 and 115 is entirely correct. We actually  
9 think that is the loss that the government suffered. In fact,  
10 we are giving the defendant quite a bit of the benefit of the  
11 doubt because we are saying that everything within the budgeted  
12 category was a proper expense. It makes that assumption. And  
13 everything -- all we are saying is everything outside of that,  
14 either if it's a nonbudgeted category or something overspent  
15 on a budgeted category, represents a loss to the government.

16 However, if your Honor is not inclined to accept that,  
17 because of concerns you have about the calculations here, at  
18 the very least, if you look simply at the nonbudgeted  
19 categories, things that were not approved by NIST at all, which  
20 are those things that I mentioned before -- rent, utilities,  
21 capital improvement, cleaning, meals, and other -- then we have  
22 a loss amount that is at a minimum just two levels less than  
23 what's in the PSR.

24 THE COURT: You would agree that it should not be  
25 entitled to subscriptions as other expenses.

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1 MR. EVERDELL: I apologize, your Honor. I  
2 miscalculated. It's not two levels less. It's actually four  
3 levels less. If you start with a base offense of 6 and the  
4 loss amount is more than 120,000, that adds 10 and you get 16.

5 MR. RUBINSTEIN: Your Honor, I think that the initial  
6 distinction is a question of what is allowable and what is  
7 allowable. And I think --

8 THE COURT: What is what?

9 MR. RUBINSTEIN: Allowable; in other words --

10 THE COURT: I know what allowable is.

11 MR. RUBINSTEIN: As opposed to what the budget says  
12 that was allowed. I say to your Honor that this money was not  
13 given to buy equipment, just to buy equipment, to get  
14 subcontractors, to have employees. This money was given for  
15 research. That was the purpose of the money.

16 I think that the government is using the budget in a  
17 way that it never was intended for the purposes of what a loss  
18 should be. Let's assume that Dr. Karron's spent the whole  
19 \$800,000 on machinery. He wasn't budgeted for it, but he spent  
20 \$800,000 for machinery for the project. He didn't take a  
21 salary, he didn't spend money on anything else and, lo and  
22 behold, the project ran the three years and he developed the  
23 science that the money was given for. Under that theory he  
24 could be prosecuted for \$690,000 in misspent money.

25 The bottom line is, your Honor, the fact that they

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1 come up with a category and then they say, we have a category  
2 here, capital improvements, the testimony is clear,  
3 uncontroverted, that these weren't capital improvements. They  
4 were site preparation and they devalued the apartment -- we had  
5 an expert -- a one bedroom apartment in Kips Bay selling for  
6 just over \$500,000. Everyone who knows anything about the real  
7 estate market in New York City. That figure was devalued  
8 because it devalued, but they have a category. It's called  
9 capital improvements and we don't have a category in the  
10 budget. Therefore, not only whatever you spent, no matter what  
11 else you want to call it, we called it capital improvements.  
12 Did anybody call it capital improvements but the government?  
13 Now they say, it's capital improvement, not in the budget,  
14 therefore disallowed. I submit to your Honor, this is site  
15 preparation. Any reasonable, logical person would conclude --

16 THE COURT: The trouble is, in his application for the  
17 grant he said -- he gave the impression that they were up and  
18 running.

19 MR. RUBINSTEIN: They had equipment there.

20 THE COURT: As I understood it, active Web site, et  
21 cetera.

22 MR. RUBINSTEIN: They had a Web site.

23 THE COURT: And they had computer equipment.

24 MR. RUBINSTEIN: But they didn't have this kind of  
25 computer equipment, Judge. We are going back --

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1 THE COURT: You don't need site improvement.

2 MR. RUBINSTEIN: They needed it here. The contractor  
3 testified what he did. He built things, he put up rackings for  
4 them to convert the living room into a computer lab.

5 THE COURT: The material was -- everything was in  
6 there. What he did was, as I understood it, was to improve the  
7 usability of the space.

8 MR. RUBINSTEIN: Not for an apartment.

9 THE COURT: Not something that was called for in the  
10 budget.

11 MR. RUBINSTEIN: It's not called for in the budget, I  
12 agree with you. It may come under the categories of others.  
13 It may come in here. But the question is --

14 THE COURT: Others is for audits. Other was the only  
15 thing -- the budget under other was audits, is my recollection.

16 MR. RUBINSTEIN: There was a budgeted category called  
17 audits, your Honor.

18 THE COURT: The only thing that was budgeted under  
19 others was audits, \$10,000.

20 MR. RUBINSTEIN: If you look at 115, you'll see that  
21 in 115, next year, they disallowed the \$10,000.

22 The bottom line is that the items that the prosecutors  
23 talked about, capital improvements, I submit, were not capital  
24 improvements. The meals, they have no breakdown of where the  
25 meals were, who the meals were for. If you recall Riley's

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1 testimony, she went to lunch with Dr. Karron to talk about this  
2 investigation with other people from CASI, and she disallowed  
3 that lunch. Any business is going to charge a lunch like that.  
4 Dr. Karron spent on his Master Card -- he had three credit  
5 cards. The only card that he charged meals on that were  
6 deducted were on the American Express CASI card. His own card  
7 and the Master Card is in evidence. He never deducted.

8 To suggest that there is not a category of meals,  
9 there is travel. There is travel -- does travel include meals  
10 when you travel? That's why when we broke down, your Honor,  
11 the subscription, we told you what those were. They had  
12 nothing to do -- you sort of have the category, you were  
13 thinking of some magazines like Sports Illustrated. This is  
14 for research for access to research for the projects. So you  
15 subscribe to a service to get your scientific data.

16 THE COURT: The big item that Mr. Everdell was saying,  
17 just, look, take the ones that aren't within the budget, the  
18 nonbudgeted items, and add them up and giving you credit for  
19 the utilities amount, so you have an \$11,000 credit, as I  
20 understand it. You still have 11,000 under utilities or maybe  
21 12, 12,000.

22 MR. RUBINSTEIN: It would be almost 5,000 under  
23 utilities --

24 THE COURT: You save that, so to the extent, instead  
25 it would be 5,000. What about the other entry, the rent entry?

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1 MR. RUBINSTEIN: Clearly, he was not entitled to the  
2 rent, your Honor, so that's \$60,000.

3 THE COURT: Then you add the other two then --

4 MR. RUBINSTEIN: What do you add two with, Judge?

5 THE COURT: \$43,000 spent.

6 MR. RUBINSTEIN: For subscriptions?

7 THE COURT: No. For bookkeeping, auto expense, blank  
8 processing, consultants, lawyers, dues, prescriptions.

9 MR. RUBINSTEIN: That he's allowed. Subcontractors.

10 MR. EVERDELL: Your Honor, I think that the defense  
11 counsel is saying it's allowed simply because it is listed  
12 under the category other, but, as your Honor pointed out, in  
13 the budget, the only thing that the company listed for its  
14 other expenses was the audit.

15 THE COURT: You got this 80,000 figure that you can  
16 move around. But that seems to me is already taken care of  
17 when you look at the overdrawn equipment and the overdrawn  
18 materials and supplies. That takes care of the 80,000 pretty  
19 well.

20 MR. RUBINSTEIN: But those were budgeted items, your  
21 Honor, that went back to the intent theory. If they were  
22 budgeted items and he had no criminal intent -- he intended to  
23 misappropriate. We concede that. He spent over the budget.  
24 But did he criminally intend to misappropriate that amount?

25 THE COURT: He didn't spend much over the total amount

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1 because he took out the 836,5 plus \$1300, apparently, the first  
2 year. It's these expenditures in the other category that --

3 MR. RUBINSTEIN: If you have 60,000 for the rent, you  
4 have 11,000 for the -- you have 5,000 for the utilities.  
5 That's 65,000 in the first year for the utilities. I submit  
6 that the capital improvements are not -- are a legitimate  
7 expense. The cleaning is questionable. Even though I think  
8 that it's arguable on defendant's side, I won't contest the  
9 cleaning.

10 THE COURT: It's an appropriate expense. He should  
11 have gotten approval for it.

12 MR. RUBINSTEIN: That is the point. The point is, if  
13 he didn't get approval, we know that the rent -- he was turned  
14 down and he still took the rent. We know that that is an  
15 amount that he took that he wasn't entitled to.

16 But as to other items that were for the benefit of the  
17 research, it doesn't seem that the guidelines, when you look at  
18 the loss factors and how to consider loss and you consider  
19 government benefits, I think even though they don't have the  
20 specific illustration, the government can't cite one grant case  
21 where there was a misappropriation.

22 The problem here is that, what was the government's  
23 benefit? They gave money for a research project. It's  
24 unquestionable that's all they did was research. The only  
25 monies he put in his pocket were the rent monies.

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1 THE COURT: The problem is that CASI, he did own CASI,  
2 as I understood it, he and his family, I guess. You can  
3 misapply money not just for your benefit, but you can misapply  
4 money for the corporation's benefit.

5 MR. RUBINSTEIN: Right.

6 THE COURT: The trouble with capital improvements,  
7 yes, it probably was not to his personal benefit because the  
8 apartment probably was worth more unimproved than it was  
9 containing those improvements, but it would be beneficial to  
10 CASI as a computer center, research computer center, to have  
11 the improvements made. That's the problem. That would still  
12 not be the research contemplated by the grant.

13 MR. RUBINSTEIN: I still don't see where they get  
14 their figure that they are claiming --

15 THE COURT: I don't see the capital improvements. I  
16 didn't realize the amount was \$37,000.

17 MR. RUBINSTEIN: When the apartment was sold they had  
18 to rip out all that stuff for the new owner.

19 THE COURT: That's what I was referring to earlier.  
20 What kind of a figure do you come up with,  
21 Mr. Rubinstein?

22 MR. RUBINSTEIN: In the first year, 60,000 for rent,  
23 5,000 for utilities. I'm rounding off. 2,000 for meals and  
24 67,000 in the first year. Questionable capital improvements or  
25 site preparation, which would probably go under equipment. And

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1 the --

2 MR. KWOK: Can we have the amount on that?

3 MR. RUBINSTEIN: For capital improvements?

4 MR. EVERDELL: The thing you just cited.

5 MR. RUBINSTEIN: I said 2,000 for meals, 5,000 for  
6 utilities, 60,000 for rent. Second year, there is 2,000 for  
7 rent, 5,000 for utilities. Meals, the second year, rounded off  
8 to \$1500. I'm sorry. Meals. \$3,000. That would make it  
9 \$77,000 without capital improvements. If you gave the whole  
10 capital improvements, which I don't see how you can do that for  
11 the two years, you're talking about 20. We don't concede this.  
12 We are talking about 31,000 over there.

13 So in a worst-case scenario it would be 108,000, but I  
14 submit to your Honor that I don't see why capital improvements  
15 should be considered as a nonbudgeted item when it clearly was  
16 used in order to facilitate -- you couldn't put those big  
17 computers in that apartment without site preparation. You  
18 wouldn't do it without having the shades to keep the heat out,  
19 without having extra wiring to get the electricity needed for  
20 the place. These are things that are totally unrelated to what  
21 anybody would consider a capital improvement.

22 THE COURT: Part of the problem here is that the site  
23 was changed from NYU to apartment. With NYU you had free space  
24 and a place for the computers. When that fell down, he  
25 switched to the apartment. But the budget doesn't change in a

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1 material way, I believe, between the two budgets. I think it  
2 should have.

3 MR. RUBINSTEIN: Judge, I just feel that looking at  
4 Judge Rakoff's decision in Adelstein -- Adelson, rather, and in  
5 other decisions that I've seen, including Judge Block's  
6 decision out of the Eastern District --

7 THE COURT: It's not in your memo.

8 MR. RUBINSTEIN: I know. Because I'll give you the  
9 citations, your Honor. Judge Rakoff is 441 F.Supp.2d 506.  
10 Judge Block's decision citing Judge Rakoff's decision is a  
11 Westlaw citation of 354151 and a -- and they talk about --  
12 those cases were primarily stock cases. They talk about that  
13 the fraud guidelines -- because the numbers increase so much  
14 that they give a distorted view of what a reasonable sentence  
15 should be.

16 In both of those cases -- I'm not even up to that  
17 point because first we have to have a guideline analysis before  
18 we get to the questions of downward departure or 3553  
19 considerations. I think what the Court is trying to decide now  
20 in its analysis is, first, doing what the guideline calculation  
21 is required to do, before you determine whether or not you want  
22 to give a guidelines sentence or a nonguidelines sentence. I  
23 think that for the purposes of a guideline analysis, I think  
24 that a figure of between 70,000 and 120,000 for guideline  
25 purposes, analysis purpose, that that would be an appropriate

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1 range, 70,000 to 120,000 without --

2 MR. KWOK: Your Honor, if I may, even taking just the  
3 items Mr. Rubinstein talked about, the rent, utilities, meals.  
4 Utilities, by the way, just the difference, not the whole  
5 thing, we are up to \$100,000 already. And then if you look at  
6 Government Exhibit 115, year two, the category under other,  
7 which includes all manners of things like bookkeeping, auto  
8 expense, bank processing, consultants, lawyers, dues,  
9 subscriptions, that alone is \$31,000. If you add that category  
10 alone to all the stuff that Mr. Rubinstein just conceded, we  
11 are already over \$120,000, which puts us at level 16.

12 MR. RUBINSTEIN: I didn't concede that. There is no  
13 breakdown of what they are talking about. They give you  
14 bookkeeping auto expenses, which I assume relate to travel,  
15 bank processing consultants is budgeted for 250,000 -- rather,  
16 he is budgeted for \$110,000 in subcontractors, which I guess  
17 are consultants. He spends only 6,000 of that, and they throw  
18 in consultants, dues, subscriptions into a category. Then they  
19 want to say, that's \$31,000. I submit to your Honor, that  
20 nobody from that chart or from the 110 backup could say how  
21 they ever arrived at this number. Then they want to  
22 arbitrarily plug it in and say, no, look at that, we have  
23 arrived at the next level.

24 THE COURT: I'm looking where those figures must have  
25 come from. I think if you look at 110, 111, we can probably

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1 determine --.

2 MR. KWOK: For example, your Honor, you can look at  
3 Government Exhibit 110, page 17 of 37. That, for example,  
4 lists all the gas payments, all her expenses. That's where it  
5 came from. That's just one example.

6 THE COURT: Mr. Spring is bookkeeper. That's what Kim  
7 Jackson is for Sprint.

8 MR. KWOK: That's right.

9 THE COURT: The sole purpose, as I understood the  
10 testimony, and I may be wrong, for Mr. Spring to be employed  
11 was to get the books in order for the other. They had another  
12 bookkeeper, as I understood it, but I may be wrong, who could  
13 take entries for bookkeeping, but wasn't skilled enough for  
14 interpreting what should be in the company's expenses and what  
15 should be personal expenses, and what should be reasonable  
16 expenses. Is that correct?

17 MR. EVERDELL: Your Honor, I think Mr. Spring, in  
18 addition with helping with the audits, also stayed on to do  
19 additional bookkeeping work for the company even after the  
20 audit was over.

21 THE COURT: I thought it was all computerized.

22 MR. EVERDELL: I misspoke.

23 In addition to help preparing the books for the  
24 upcoming audit, he also conducted some regular bookkeeping  
25 activities for the company. Even so, you have \$10,000 budgeted

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1 for the audit and you went over that \$10,000 by the amounts in  
2 other, which includes the overage, includes some of the Frank  
3 Springs expenses, but it also includes some things like auto  
4 expenses.

5 THE COURT: But you are allowed the \$80,000, but then  
6 the \$80,000 has been used up.

7 MR. EVERDELL: By equipment or any other number of  
8 categories, yes, your Honor.

9 It's the government's position that at the very least  
10 that this money should be counted as a loss. It's nonbudgeted  
11 and it's completely absent from the budgets that were  
12 submitted, and was money spent with ATP grant money.

13 Let's also not lose sight of the fact that it was very  
14 clear from the budget rules or from the ATP rules that indirect  
15 costs are not covered, and that was made very clear to the  
16 defendant at all the premeetings before he started the grant.

17 Yes, certain things -- research can't happen without  
18 lots of things being bought, lots of things being improved, all  
19 this stuff. But it doesn't mean that you can use ATP grant  
20 funds to spend on that stuff. You have to follow the rules.

21 So these expenses -- I think, just looking at the  
22 spreadsheet that Ms. Riley prepared, you can see how they are  
23 itemized out here, at least the other category.

24 THE COURT: Is Peter Ross an employee or was he a  
25 consultant?

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1 MR. EVERDELL: Peter Ross, your Honor? I don't think  
2 I know where you're looking, your Honor. I see.

3 Your Honor, I think that Dr. Karron chose to pay Peter  
4 Ross as a consultant. Even so, what we are talking about here,  
5 that's a \$15 charge.

6 THE COURT: What charge?

7 MR. EVERDELL: I thought you were talking about the  
8 Peter Ross parking charge.

9 THE COURT: Yes.

10 MR. EVERDELL: Reimbursement to Peter Ross is a \$43  
11 charge.

12 We are talking about very small numbers here. Under  
13 the guidelines, as it says in the commentary, the Court need  
14 only make a reasonable estimate of the loss. And I think when  
15 you consider all these categories that we are talking about and  
16 the fact that it is backed up on the paper here, that we are in  
17 the range, at least, of 120,000, given what Mr. Rubinstein has  
18 just told your Honor and the very small difference that seems  
19 to exist at this point.

20 The categories that are nonbudgeted categories should  
21 be counted, and that bumps us into the \$120,000 range without  
22 much trouble at all. Given that your Honor doesn't have to  
23 come to an exact dollar amount of loss, the minor  
24 discrepancies, to the extent they even exist, shouldn't deter  
25 your Honor from coming to that larger loss amount because I

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1 think the clear, logical way to read the evidence is that there  
2 are lot of nonbudgeted categories and they are backed up by the  
3 spreadsheet analysis, and that these should be considered as  
4 loss to the government because they were not approved, as the  
5 defendant knew he needed.

6 THE COURT: Brings me back to the question --

7 MR. RUBINSTEIN: The problem is, Judge, when you go to  
8 the backup that they throw out there, 110, and you find that  
9 the bank charges are under \$336 --

10 THE COURT: What page are you on?

11 MR. RUBINSTEIN: We have a gas expense on page 17 of  
12 37 of \$1,189.68. We then have --

13 THE COURT: I missed the page.

14 MR. RUBINSTEIN: Page 17 of 37. We know that  
15 Dr. Karron was traveling to Washington, D.C. and to New Jersey  
16 as part of his work on this research, but let's take the whole  
17 figure. Next they have -- let's assume she put in -- the  
18 parking, \$67, that's on 18 of 37. Then they have bank  
19 processing on 18 of 37 of \$336. If you add up lawyers they  
20 have on 21 of 37 \$1,173.75. And I submit that's questionable  
21 because I think those lawyers were patent lawyers related to  
22 securing intellectual property that they were allowed to do.  
23 Then it says dues and subscriptions under that. They have  
24 \$198.

25 I'm looking for the -- they have that bookkeeping

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1 figure out. I don't think it is appropriate, but they have a  
2 bookkeeping -- I don't know who that included, but let's leave  
3 the bookkeeping out of it. We are talking about under \$3,000,  
4 in my quick math, of expenses. And then they tell you that the  
5 category calls for \$31,000, but their thing is 31 thousand 8 or  
6 625, depending on your eyesight. How that's broken down,  
7 whether or not these are appropriate expenses, then they say,  
8 let's plug in this additional \$31,000. I submit to your Honor  
9 that would be inappropriate.

10 MR. EVERDELL: Your Honor, let me address -- for  
11 example, there is a specific issue with the lawyers. Pennie &  
12 Edmonds, patent attorneys, it was my understanding that this  
13 was incurred before the grant even started. And these charges  
14 for lawyers are specifically prohibited by the grant rules.

15 Was Mr. Karron told this? No. Because he never  
16 actually tried to budget it as an item. Had he tried to budget  
17 it, he would have been told specifically that he couldn't use  
18 grant money to do this.

19 Again, we are faced with this argument that if it  
20 arguably somehow benefits the research, it should not be  
21 covered at the loss. The government submits that that is  
22 simply unworkable. What we have to work with is what was  
23 budgeted and what was approved by NIST, and anything that  
24 wasn't is a loss to the government.

25 Not only that, your Honor, we are talking at least --

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1 now we seem to be talking about the difference of maybe \$10,000  
2 between two thresholds in the guidelines. The defendant's  
3 calculation that he gave you a few moments ago doesn't even  
4 include the cleaning expenses, and that's several thousand  
5 dollars two years in a row. And that I just don't see the  
6 argument there. Again, the only argument could be, as he said  
7 in his papers, was that you need to clean in order to make the  
8 computers work. That simply doesn't hold water.

9 This is an indirect expense, something that is  
10 disallowed by the grant and was never budgeted and never  
11 approved. That is a loss to the government. It was money that  
12 was spent in contravention of clear rules that were set out  
13 governing the grant fund.

14 So given the fact that we are literally arguing now  
15 about a couple thousand dollars here and there, and I  
16 believe -- we could sit here and tally up all of these  
17 nonbudgeted expenses. I guarantee you, we would be over the  
18 120,000 dollar mark without any trouble whatsoever.

19 THE COURT: What's the applicable note that we apply  
20 here to losses?

21 MR. EVERDELL: Your Honor, there are a few. One is  
22 the estimation of loss, which just says -- that's 3A -- 3C,  
23 which says that the Court need only make a reasonable estimate  
24 of the loss, but also the special rules.

25 THE COURT: You're looking in the commentary.

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1 MR. EVERDELL: I'm looking at the commentary, yes,  
2 your Honor.

3 Commentary 3, which is loss under subsection B1 and  
4 then 3C, estimation of loss, said: The Court need only make a  
5 reasonable estimate of the loss. And the Court's loss  
6 determination is entitled to appropriate deference. And then  
7 if you look at F, which are the special rules --

8 THE COURT: I just want to see one second because I  
9 have trouble, I guess, in determining whether or not it should  
10 be loss to the government or misappropriation.

11 MR. RUBINSTEIN: There is another basis --

12 THE COURT: Intentional misappropriation by the  
13 defendant. It seems to me it should be intentional  
14 misappropriation by the defendant.

15 MR. EVERDELL: An intentional misappropriation, your  
16 Honor, would include the fact that he was told that he needed  
17 to submit all of these charges in his budget and get prior  
18 approval for them.

19 THE COURT: The fraud and deceit element is somewhat  
20 lacking.

21 MR. EVERDELL: Your Honor, as you, I think, pointed  
22 out earlier, the case law shows that you can have a  
23 misappropriations case even if the expenditures arguably  
24 benefited the company. That's the Urlacher case.

25 THE COURT: Isn't this application to the benefit of

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1 the defendant, or third party?

2 MR. EVERDELL: Or to the defendant.

3 THE COURT: That's under one of these guidelines.

4 Which is it?

5 MR. RUBINSTEIN: No, it's not, Judge. That is for the  
6 purposes of guilt. We are talking now for guideline purposes  
7 determining the loss, which I suggest is a different analysis.  
8 I think your Honor should be directed to 2B1.1, 3B, where it  
9 says gain. This is an alternate method for the Court to use.

10 THE COURT: Let me find you, where you are. 3B. Now  
11 you're going to the commentary.

12 MR. RUBINSTEIN: I'm in the commentary, Judge. 3B  
13 says gain. The Court shall use the gain that resulted from the  
14 offense as an alternative measure of loss only if there is a  
15 loss, but it reasonably cannot be determined. And I submit to  
16 your Honor that under these circumstances you cannot reasonably  
17 determine what the loss is, so you should look at the gained  
18 factor which in this case would result in looking at the rent,  
19 the \$62,000; the utilities; cleaning, if you want; meals, and  
20 you would be just over \$70,000. I think that is the  
21 appropriate analysis here before you consider any credits or  
22 offsets. But first we have to arrive at what is an appropriate  
23 figure. Obviously, the guideline considers the fact of what  
24 someone actually puts in their pocket for personal benefits.

25 MR. EVERDELL: Your Honor, I have not looked at the

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1 case law on this recently and it was not cited in any  
2 submission by Mr. Rubinstein, but I think the loss can be  
3 reasonably determined based on the numbers set forth by the  
4 government. I don't think we need to rely on any alternative  
5 method of loss because we can determine what the government  
6 lost as a result of all of this.

7 I think, if I remember correctly, the cases where you  
8 talked about alternative loss calculations is where the  
9 victims -- there are so many victims and the calculation  
10 involved things like stocks and how the value of stocks go up  
11 and down and how that's very hard to estimate. Here we are  
12 talking about hard numbers. We know what grant money went to  
13 the defendant and we know what he spent it on. The question  
14 for your Honor to consider is which of these expenditures are  
15 you consider as a loss to the government and which are not.

16 THE COURT: Insofar as the misapplication involved  
17 fraud, then I think you used loss. Insofar as the  
18 misapplication is intentional -- this application seems to be a  
19 different definition of intended. Then it seems to me to use  
20 the gain to the defendant or a third party. But I can't see  
21 where I am in the guideline notice. I don't see that it really  
22 applies under the guideline notes. So what I just said isn't  
23 supported by the guideline notes.

24 MR. RUBINSTEIN: What's that, your Honor? I missed  
25 that.

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Sentence

1 THE COURT: What I just said isn't supported by the  
2 guideline notes, as I see it.

3 MR. RUBINSTEIN: What's that, your Honor?

4 THE COURT: I gather that you only apply gain to an  
5 intended misapplication, you apply loss to a fraud case if it's  
6 done by a fraud. Then you apply loss. My problem from the  
7 beginning here has been that distinction. I am not sure you  
8 apply loss here.

9 MR. EVERDELL: Your Honor, the commentary that the  
10 government was following was actually -- in combination with a  
11 reasonable estimate was the 3F special rules.

12 THE COURT: Let me look at the rules.

13 MR. EVERDELL: 3F2, government benefits, which is also  
14 the section that was cited by the defendant in his letter,  
15 which says: In a case involving government benefits, e.g.  
16 grants --

17 THE COURT: It says: Subject to the exclusion and  
18 subdivision if the loss is the greater of actual loss and  
19 intended loss. In a sense, the whole thing, the whole  
20 agreement was a loss to the government.

21 MR. EVERDELL: Yes, your Honor. In fact, the  
22 defendant never even did his cost share, as we know, and was  
23 essentially not entitled to any of the grant money that he  
24 spent.

25 THE COURT: There was his contribution later, wasn't

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1 there some money?

2 MR. EVERDELL: I think after the grant was suspended  
3 there was a contribution by the defendant.

4 THE COURT: That went to outstanding bills.

5 MR. RUBINSTEIN: That money was probably extended.  
6 That's the whole purpose. It increases your budget.

7 MR. EVERDELL: Your Honor, the government told the  
8 defendant that in order to comply with the cost share he had to  
9 make payments to the government and that's the payment that was  
10 made, but I believe this was after --

11 THE COURT: That's more than the cost share --

12 MR. EVERDELL: I'm sorry. He did not make that  
13 payment.

14 THE COURT: The \$70,000.

15 MR. EVERDELL: You are talking about the \$70,000  
16 loan --

17 THE COURT: There is some statement in these papers  
18 that he gave 70,000 after the closing period.

19 MR. EVERDELL: That \$70,000, which I believe  
20 Mr. Rubinstein was saying was done between July 27 -- June 27  
21 of 2003 and August of 2003 was after the suspension.

22 THE COURT: What was that used for?

23 MR. EVERDELL: One moment, your Honor.

24 Your Honor, I believe my understanding is there were  
25 outstanding invoices at the time that the \$70,000 was used to

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1 pay the outstanding invoices. It was not actually used to pay  
2 the government any of the cost share amount. So that didn't  
3 translate --

4 MR. RUBINSTEIN: You never pay the government the cost  
5 share. You put the money in so you take the money out and  
6 spend it. That's the concept. The money --

7 THE COURT: It doesn't go to the government. It goes  
8 to the budgeted items during the period of the grant. Before  
9 it was suspended --

10 MR. EVERDELL: I think that is the point, your Honor.  
11 It wasn't before the grant was suspended. The grant was  
12 suspended on June 27, 2003.

13 THE COURT: To keep CASI going.

14 MR. EVERDELL: But under the guideline rules, if the  
15 fraud, if the misappropriation is discovered by a government  
16 agency, that is the point at which you start -- you cut off  
17 people from getting credit from payments they make later. And  
18 as I think I outlined in the government's letter to the Court,  
19 that date predates the suspension date because we had testimony  
20 from Hope Snowden who testified that when she was getting  
21 revised budget submissions at the end of 2002 and the beginning  
22 of 2003, she noticed there were serious discrepancies in the  
23 budget numbers and that raised red flags to her that there may  
24 be some problem with the appropriation of these funds and that  
25 led to them calling it off.

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Sentence

1 THE COURT: I think that's covered in my opinion.

2 MR. EVERDELL: That is the date of discovery and the  
3 defendant is, in fact, not entitled to a credit for any funds  
4 he may have given back at that point because the  
5 misappropriation was discovered.

6 MR. RUBINSTEIN: That's not, your Honor -- I'll take a  
7 look at your opinion. That's not the date of the discovery  
8 from the standpoint that the defendant put monies back because  
9 he thought that it was discovered he did something wrong. The  
10 bottom line is, he didn't think he did anything wrong. That's  
11 the whole concept of the discovery is that we don't want  
12 somebody to run back and put money in after they find out that  
13 their theft has been discovered.

14 This is a misappropriation case and he did not feel --  
15 he was a he then -- that he had done anything wrong. And it's  
16 his mental process, not their mental process, because the whole  
17 concept is, hey, if you get caught stealing, at that point,  
18 when you give it back, it's not the same as if you did this  
19 voluntarily because you realized you did something wrong and  
20 you wanted to make amends before it was detected. So I think  
21 that they have the wrong person that has to be aware of when  
22 there is something wrong here.

23 THE COURT: I see that this section, subsection of the  
24 commentary, subsection II says, in a case involving government  
25 benefits, entitlement program payments, losses shall be

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1 considered to be something obtained from unintended recipients  
2 or diverted to unintended uses. The problem I'm having is that  
3 there is more than one statute -- the statute deals in terms of  
4 fraud in one case and intentional misapplication in another.  
5 And it does seem to me that benefits obtained by unintended  
6 recipients deals with intentional misapplication of funds  
7 diverted to unintended uses. The second part of this note to  
8 the guidelines is more difficult to apply in intentional  
9 misapplication of funds in terms of showing that it was an  
10 intentional misapplication. All the evidence in the case kind  
11 of shows that when confronted with misapplying the funds, he  
12 would say things like, my mother has got the money or something  
13 else, I'm working on it, they are going to come along, and the  
14 ladies down there at the program love me and everything is  
15 going to be all right. Never does he make a statement, at  
16 least to these parties, the hell with rules, I'm taking the  
17 money. They owe it to me for my research.

18 I find it difficult to apply the guidelines in this  
19 case. Maybe the guidelines make it a situation that didn't  
20 occur to the drafters of the guidelines. It's not the usual  
21 case, as I understand it.

22 Are there other cases of this sort that either party  
23 is relying on involving the intentional misapplication -- are  
24 there other cases involving the intentional misapplication of  
25 funds as opposed to fraud, embezzlement?

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Sentence

1 MR. EVERDELL: I looked for some cases that talked  
2 about loss amount in sentencing. I didn't find anything very  
3 helpful in that regard. What I was going with was literally  
4 what I got from the guidelines.

5 But I still don't know why it's difficult to apply  
6 diverted to unintended uses in this case, that prong of the  
7 guidelines, special rules for government benefits, because that  
8 seems to me to be the definition of misapplication. You're  
9 taking funds and applying them for unintended uses, unintended  
10 in this case by the people who gave out the grant money, NIST.  
11 And unintended in the sense that they gave out the money with  
12 lots of rules attached to it, that they made clear to the grant  
13 recipients and those were the intended uses of money, that is,  
14 expenditures that followed the grant spending rules. And  
15 anything that did not follow the grant spending rules was an  
16 unintended use of that grant money. I think that was made very  
17 clear to the defendant in this case and, from the testimony, to  
18 all grant recipients, that things like the kickoff meeting and  
19 other things like that. I think that is actually the  
20 appropriate part of the guidelines to be applying in this case,  
21 that the money that was spent, contrary to grant spending  
22 rules, was diverted for an unintended use and that that  
23 constitutes a loss.

24 Now, your Honor raised some difficulties you had with  
25 the calculations for certain things and whether overbudget

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1 expenses should count or should not. We have, at least, I  
2 think, provided a more simplistic and one that benefits the  
3 defendant way of thinking about this, which is just looking at  
4 the unbudgeted categories. Those are clearly cases, money that  
5 was spent contrary to the grant rules because there was  
6 absolutely nothing in the budget that spoke to it. These are  
7 monies that were expended without any reference to the grant  
8 rules whatsoever.

9 Now, defendant can argue that these things arguably  
10 benefited the research in some way. Perhaps they did, but  
11 that's not the standard that we need to operate with because  
12 that would sweep in every single expenditure. There would be  
13 no loss in any of these types of cases if that's the way we  
14 have to look at it. If you look at the unbudgeted categories  
15 and you apply to unintended uses, being diverted contrary to  
16 the grant rules, that provides a framework for the loss amount  
17 that's appropriate in this case.

18 MR. RUBINSTEIN: Your Honor, I think that this case is  
19 outside the heartland because I don't think anybody envisioned  
20 a case where somebody got a grant, spent all their time and  
21 energy on that grant, bought equipment in furtherance of the  
22 grant. There is no suggestion here. As a matter of fact, Lide  
23 even testified that Dr. Karron met all the benchmarks, and your  
24 Honor said something that I have to take opposition to,  
25 suggesting that nothing came of this research.

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Sentence

1 THE COURT: No. Saying that the project wasn't  
2 completed, so I suppose that they didn't get their money's  
3 worth in that sense.

4 MR. RUBINSTEIN: No. Because the government gets  
5 their money's worth since they didn't have a financial benefit,  
6 no matter what, and that the whole concept was that if  
7 something was developed, Dr. Karron and CASI would keep all the  
8 profits for themselves. Society would benefit. They were  
9 doing research on a cutting edge. We have to go back seven  
10 years ago. Now it's commonplace. But they were dealing with  
11 the concept of -- I hope I pronounce this right -- topological  
12 imaging that they use today in many medical factions.

13 I submit to the Court and the government a paper that  
14 was submitted for publication, citing work that was submitted  
15 to a medical journal, citing this work because, in fact, that  
16 was the whole purpose of this research. That's why the grant  
17 was given, to develop this concept, at a time where they use  
18 computers half the size of this room. Today they probably  
19 could use a laptop and get the same information. I know I have  
20 it here. Just a second, your Honor.

21 THE COURT: I'm not taking issue with that,  
22 Mr. Rubinstein. I am not taking issue with that. It never  
23 came to fruition with the commercialization of the process, as  
24 far as I know.

25 MR. RUBINSTEIN: They are talking about the amount

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1 that Dr. Karron received and the figure that we started out  
2 with from -- as to salary, it seemed to me that that figure, as  
3 I cited in my submission of October 17, on page 3 -- first of  
4 all, they have 129,850 in loans. This is at 110, Government  
5 Exhibit 110, 38 through 40 of 44, the second portion of 110.  
6 They show 129,850 loans to Dr. Karron. We dispute one, and I  
7 have backup for it, a \$750 check that was really for Scott Alba  
8 that was advanced from defendant out of his own money. Then  
9 December 30, '02, 15,000 check that's for reimbursement.  
10 Doesn't say anywhere on that check where it says loan, we  
11 reduced those numbers.

12 THE COURT: Why do you say that shouldn't be --

13 MR. RUBINSTEIN: Because that was a partial  
14 reimbursement. There is nothing on that check --

15 THE COURT: If he writes a check and it says partial  
16 reimbursement on it, isn't that reimbursement for loans taken?

17 MR. RUBINSTEIN: It's partial reimbursement because  
18 the medical expenses that were on the credit cards --

19 THE COURT: What's partial reimbursement of expenses  
20 taken? I don't know what you're talking about.

21 MR. RUBINSTEIN: Out-of-pocket expenses that he paid  
22 on the MasterCard that's in evidence. They never give him  
23 credit for the monies that we have the documentation that we  
24 submitted to the Court, and I have additional documentation  
25 showing -- not only showing that these bookkeeping entries gave

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1 back 67 -- \$75,000 that was given back by salary paychecks that  
2 he never gets credit for. It seems to me when they came up  
3 with the figure that they used for his salary, they included  
4 the 60,000 of rent. I mean, they have never said --

5 THE COURT: I don't think it did.

6 MR. RUBINSTEIN: If you look at pages 38 through 40 of  
7 Exhibit 110, the one that ends in 44 --

8 THE COURT: 1 and --

9 MR. RUBINSTEIN: The second half of 110 has 38 of 44.  
10 The beginning part says --

11 THE COURT: 38 of 44, yes.

12 MR. RUBINSTEIN: We have 38 of 44, 39 of 44, 40 of 44.  
13 It starts out on the top of 38 saying, Dr. Karron's loans. I  
14 have the check that I submitted as part of it on the \$15,000  
15 loan. It doesn't say anything about loan. Here she puts DPK  
16 loan, but there is nothing on the check to indicate loan.  
17 There are other checks that do say loan. So why --

18 THE COURT: Which one is that?

19 MR. RUBINSTEIN: Just above the line for loan repay.

20 THE COURT: I see it. I see that.

21 MR. RUBINSTEIN: This is 9/12/02, check 10451, it's  
22 written to Dr. Karron.

23 THE COURT: Can I see the check?

24 MR. RUBINSTEIN: Yes, your Honor.

25 THE COURT: It's a check payable to Dr. Karron. It

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Sentence

1 says something. It's deposited. It isn't salary. Why isn't  
2 it a loan?

3 MR. RUBINSTEIN: Why is it a loan? It's a  
4 reimbursement. It doesn't say anywhere what it is, but they  
5 classified it as a loan.

6 THE COURT: I would, too, if I see it paid to him.

7 MR. RUBINSTEIN: They have other checks, your Honor,  
8 where it says loan on it.

9 THE COURT: Where does it show as reimbursement?

10 MR. RUBINSTEIN: It doesn't show on that check. We  
11 understand it's on the check stub.

12 THE COURT: Reimbursement for what? It's a round sum.  
13 It sounds rather strange to be a reimbursement.

14 MR. RUBINSTEIN: This comes out of the Quick Books,  
15 you will recall, your Honor, the computer-generated software  
16 that they had, so it's in that software.

17 THE COURT: For 15,000 round dollars?

18 MR. RUBINSTEIN: You have to have an invoice --

19 THE COURT: You never have a reimbursement like that.

20 MR. RUBINSTEIN: He had a number of items. He took  
21 15,000 --

22 THE COURT: It just happens to add up to 15,000. It's  
23 very strange. Let's see the backup.

24 MR. RUBINSTEIN: Your Honor, if you can give us a  
25 short recess. Dr. Karron came with the computer. He forgot to

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1 bring the power supply. We could generate it right here. We  
2 have it in the computer. If he can recess --

3 THE COURT: Doesn't show rent, does it?

4 MR. RUBINSTEIN: Yes. He has everything in the  
5 computer in the Quick Books that are in the computer. We don't  
6 need --

7 THE COURT: This doesn't show that the amounts taken  
8 for rent were part of the salary computation.

9 MR. RUBINSTEIN: What I'm saying, Judge, I was trying  
10 to add up the numbers to get to her number. And the only way I  
11 could do that was by throwing in the 60,000 for salary so that  
12 if, in fact, his salary is accurate, which he has --

13 THE COURT: I've got to get this sentence completed.  
14 We can take a five-minute recess, if that's what you want.  
15 Take a five-minute recess then, but I don't think it's going to  
16 make much difference.

17 MR. RUBINSTEIN: All right, Judge.

18 (Recess)

19 THE COURT: Mr. Rubinstein.

20 MR. RUBINSTEIN: Your Honor, Dr. Karron purchased the  
21 necessary part -- actually, I gave him my credit card -- and  
22 the machine is booting up. We should have it momentarily.

23 MR. KWOK: Your Honor, while we are waiting, if the  
24 Court pleases, we could go to talk about the 3553(a) factors,  
25 which is another major factor.

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1 THE COURT: I want to deal with the computation. Then  
2 we can deal with the 3553(a) factors.

3 When will you be ready, Mr. Rubinstein?

4 MR. RUBINSTEIN: Your Honor, do you have a computer  
5 screen that we can plug into to show you that would be more  
6 efficient to show you?

7 THE COURT: No, I don't have one here.

8 MR. KWOK: Your Honor, just to save time on this, I  
9 think that what they are trying to print out is the Quick Books  
10 ledger, which is not in evidence, which is not authenticated,  
11 which is a document that witness after witness have  
12 testified --

13 THE COURT: I don't know what he's trying to print  
14 out.

15 MR. RUBINSTEIN: It doesn't have to be in evidence for  
16 the purposes of sentencing, your Honor.

17 THE COURT: What are you trying to print out?

18 MR. RUBINSTEIN: We are trying to print out the backup  
19 to that \$15,000 check to show your Honor that, in fact, that is  
20 not a loan; was, in fact, a reimbursement.

21 THE COURT: I am not going to make the findings on  
22 that issue. I am going to make the findings on the basis that  
23 Mr. Everdell suggested. And taking the amounts in the other  
24 categories that are not included in the budget and making the  
25 adjustments he talked about, giving the defendant credit for

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1 the utilities and all. It seems to me that the amount of the  
2 loss, pursuant to guideline 2B1.1, is more than \$120,000.

3 Isn't that your correct conclusion, Mr. Everdell?

4 MR. EVERDELL: Yes, your Honor, that's correct, more  
5 than 120,000 adding ten points to a base offense of 6.

6 THE COURT: I think that's borne out by the figures  
7 with adjustments that you pointed out, Mr. Rubinstein, as the  
8 total loss to the -- which should be computed, intended loss  
9 which should be included for guideline calculation purposes,  
10 which makes a total loss of 16 levels.

11 MR. RUBINSTEIN: Your Honor, I think your Honor has to  
12 consider the credits against whatever loss your Honor has --

13 THE COURT: I don't think there are any credits --

14 MR. RUBINSTEIN: Your Honor, I submit that under  
15 the -- that the amount of salary that they have calculated is  
16 not supported by any documentation they submitted.

17 THE COURT: In that tabulation I agree with you, that  
18 the entry includes salary and loans as they calculated it, but  
19 it doesn't make much difference because the 80,000 odd dollars  
20 that the defendant was entitled to redistribute are  
21 incorporated in the equipment --

22 MR. RUBINSTEIN: I submit, your Honor, under their  
23 figures --

24 THE COURT: Other entries.

25 MR. RUBINSTEIN: I submit under their figures, Judge,

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1 that they have added back the \$60,000 rent. If you take a  
2 look --

3 THE COURT: There is no showing of that.

4 MR. RUBINSTEIN: There is, Judge. They have not shown  
5 you at all where they get the figure that they have in 114.  
6 And I submit the only backup is on page 38, 39, and 40 of  
7 Exhibit 110 of 44 pages. And the only thing they have there is  
8 a loan which they claim is \$129,000, repayment is 37,000.  
9 Taking their best figures --

10 THE COURT: You haven't gotten any salary --

11 MR. RUBINSTEIN: Salary of 37,000 -- of, rather,  
12 35,000, and you have to add the \$60,000.

13 THE COURT: I've got to take into account on the  
14 salary the figures that apply to withholding taxes, et cetera.

15 MR. RUBINSTEIN: Yes. I don't disagree with that,  
16 Judge, but I submit that they have a \$129,000 in a loan and  
17 they don't show the repayment of the 67,000.

18 THE COURT: Repayment is right below it.

19 MR. RUBINSTEIN: No. They don't include it there.  
20 The two checks that I submitted to the Court that I have copies  
21 of with the backup showing --

22 THE COURT: Those checks are after the close of the  
23 period and were for, as I understand it, expenses incurred  
24 thereafter.

25 MR. RUBINSTEIN: No, your Honor. We are talking about

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1 two separate things. We are talking about, one is the salary  
2 that is submitted in our letter of the 17th where we provide to  
3 the Court check of August 2, '02, a year before the grant was  
4 suspended, actually ten months before the grant was suspended  
5 where you have -- that's in evidence --

6 THE COURT: Where are you reading?

7 MR. RUBINSTEIN: I'm looking at our letter of October  
8 17, your Honor. And I am showing you what was previously  
9 marked as Defendant's P6 in evidence, which shows --

10 THE COURT: You'll have to show me and you'll have to  
11 show Mr. Kwok.

12 MR. RUBINSTEIN: Mr. Kwok has the page. He has turned  
13 to it.

14 THE COURT: \$5,000 check?

15 MR. RUBINSTEIN: Yes, your Honor.

16 THE COURT: That shows the defendant had taken \$61,918  
17 in salary just below it.

18 MR. RUBINSTEIN: Right. And that --

19 THE COURT: 61,000 plus 129,000. If that's the  
20 government's figure, adds to more than \$200,000, right?

21 MR. RUBINSTEIN: No, your Honor.

22 THE COURT: \$187,000.

23 MR. RUBINSTEIN: The Court is commingling two  
24 different concepts. One is they claim there is a loan  
25 outstanding that they never gave him credit for anywhere of

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1 \$75,000 that was taken in October of 2001. I think the date  
2 was October 25 or 26 of 2001.

3 THE COURT: That's what the loan advances.

4 MR. RUBINSTEIN: It doesn't show the offset of that  
5 loan. What I'm showing your Honor is --

6 THE COURT: I know you had offsets for the loan. I  
7 have given you credit for that and I have gone over your  
8 figures in your letter and I've made calculations on the basis  
9 of it. It shows me that there is still a net payment due the  
10 government on loans.

11 MR. RUBINSTEIN: But when you add that together with  
12 the salary, it shows that Dr. Karron did not get his full  
13 salary.

14 THE COURT: I agree he didn't.

15 MR. RUBINSTEIN: So he should have an offset under  
16 guideline 2B1.1(3)(e) for credit against loss for services  
17 rendered. He rendered the services, he was entitled to full  
18 salary.

19 THE COURT: He got it in the form of loans.

20 MR. RUBINSTEIN: I submit, Judge, that it doesn't  
21 compute -- that the loan calculation does not compute to what  
22 they are saying and I submitted in my letter --

23 THE COURT: He got it in the form of loans. It's very  
24 simple.

25 MR. RUBINSTEIN: Your Honor, in my letter I showed the

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1 Court --

2 THE COURT: If you take the money from the corporation  
3 in loans --

4 MR. RUBINSTEIN: He took loans, but he paid it back  
5 out of these salary --

6 THE COURT: In part --

7 MR. RUBINSTEIN: In part. So that left, your Honor, a  
8 balance in a worst case -- in a best-case scenario for the  
9 government of \$24,765.81, and you have to add to that the  
10 60,000 from the rent.

11 THE COURT: No, you don't. Add to it?

12 MR. RUBINSTEIN: They did, though. They have never  
13 submitted how they arrived at their figure of the 200,488 in  
14 the chart, 114.

15 THE COURT: All I have to do is use my best judgment  
16 on the figures that are here. I exercised them and I have read  
17 your papers and I've taken them under account and I have  
18 somewhat struggled with them, I must admit that. I've  
19 calculated his credits for salary not taken and offset that  
20 against the loans. I still get the balance of loans due the  
21 corporation from Dr. Karron of several thousand dollars.  
22 Without taking into account in any way the rent he received of  
23 \$60,000.

24 MR. RUBINSTEIN: In all due respect, Judge, I don't  
25 see how that is possible. Nobody has shown me to this point.

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1 The government hasn't proffered how they come to their figure.  
2 I frankly don't comprehend it, but I think that even --

3 THE COURT: I think you've got to read salaries,  
4 Dr. Karron's salaries, as salaries plus loans.

5 MR. RUBINSTEIN: I do, your Honor.

6 THE COURT: The loan entries.

7 MR. RUBINSTEIN: I do. I see an entry for \$75,000 as  
8 a loan and I don't see any salary -- I don't see the balance of  
9 the two entries that I submitted to your Honor --

10 THE COURT: If he had taken the salary, you'd have a  
11 worse situation because you then have the payments due the  
12 government for withholding that weren't made, social security  
13 weren't made, the other payments of taxes not made as a result  
14 of taking less salary. The situation would be less if he had  
15 taken all his salary. He would have a worse situation  
16 confronting him.

17 MR. RUBINSTEIN: Do I understand that the Court is not  
18 giving him credit for the \$70,000 that he contributed in July  
19 and August after the grant -- this is money that he took out of  
20 a home equity loan, and I submitted the documentation to show  
21 that.

22 THE COURT: I went into that earlier in front of you  
23 with counsel and it was stated on the record, without any  
24 exception taken, that those monies were for additional  
25 expenditures that have been made between June 30 or June 23 and

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1 the date of payment of those amounts.

2 MR. RUBINSTEIN: But he should get credit for that.

3 These are expenses --

4 THE COURT: Depends on when the expenditures were made  
5 and, as stated in open court and not objected to by you, these  
6 were expenditures that occurred after the period of the audit.

7 MR. RUBINSTEIN: The audit, your Honor -- the audit  
8 didn't occur --

9 THE COURT: The audit didn't occur until later,  
10 obviously, but books and records were reviewed as of the date  
11 June 23, as I understand it, the date of suspension.

12 MR. RUBINSTEIN: He was unaware of that. As a matter  
13 of fact, Judge, you may recall the testimony that he didn't  
14 receive a copy of the audit until September, so he was totally  
15 unaware of any discrepancies. He understood that the grant was  
16 suspended because --

17 THE COURT: It doesn't matter whether he was aware of  
18 it or not. It's irrelevant.

19 MR. RUBINSTEIN: I think, Judge, that the concept is,  
20 when he's aware, because it's when he becomes aware whether or  
21 not his intention in making compensation was motivated by a  
22 guilty mind.

23 THE COURT: All I know -- I am going to take that into  
24 account in connection with the 3553(a), but not taking the  
25 guideline computation. I'm making the guideline computation as

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1 I've stated, and on that basis. And I'll hear from you further  
2 on 3553(a).

3 MR. RUBINSTEIN: Yes, your Honor. I think that this  
4 is a case that is very unusual in that Judge Rakoff used this  
5 language in the case that I previously cited, and I have a copy  
6 for the government and your Honor, Adelson. Unfortunately --

7 THE COURT: You'll want your notes, won't you?

8 MR. RUBINSTEIN: Judge, Judge Rakoff said that there  
9 are --

10 THE COURT: It's a securities fraud case. What part  
11 of the case do you want me to refer? I think I see a little  
12 error in the opinion, but it's not -- the six or seven points  
13 under the base level doesn't depend on the date of the offense.  
14 It depends on the maximum penalty for the offense. Here the  
15 maximum penalty was ten years, so only six points are allowed.  
16 If it were 20 years, it would be seven points. It has nothing  
17 to do with the date of the offense. It has something to do  
18 with the maximum penalty on the offense.

19 Give me something else.

20 MR. RUBINSTEIN: I have the language.

21 THE COURT: Tell me what you're relying on, because  
22 he's probably right.

23 MR. RUBINSTEIN: I'll try and find it as I'm reading  
24 it here, but I have the quote. There may be cases in which the  
25 offense level determined under the guidelines substantially

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1 overstates the seriousness of the offense.

2 THE COURT: You can get that in securities cases  
3 because of the number the people who lose as a result of the  
4 fraud committed by the officials of the company. The stock is  
5 publicly traded and, therefore, you have a number of  
6 transactions involved, so you get tremendous losses, as you do  
7 in this case, Adelson case. This is a different case.

8 MR. RUBINSTEIN: He was referring to that, Judge, and  
9 you're absolutely right --

10 THE COURT: I'm fully aware -- I understand that.

11 MR. RUBINSTEIN: In this case, your Honor, it is a  
12 unique case and the government cannot point to one case like it  
13 because there is no case like it. And I think that the  
14 guidelines overstate the seriousness of what happened here.

15 There is no question that the United States Government  
16 afforded Dr. Karron an opportunity to do research. They had no  
17 vested interest financially in the product of his research.  
18 Even though he has a business background that dates back over  
19 20 years, he was ill-equipped to handle these funds. And if  
20 you could see the way he withdrew money, just the dates when he  
21 did it, whether you call it a loan or a salary, you see he  
22 functioned as if whenever he needed money he would take it.

23 So he didn't take a salary until April or May of 2002,  
24 eight months into the grant. He takes his first salary check.  
25 Before that he's taking loans. At the end of the year he winds

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1 up that he owes all this money that he had taken as a loan back  
2 in October 2001, so they take it as salary at that time.

3 All his efforts and all his energies were devoted to  
4 this project, to do the research that the government wanted to  
5 be performed for everybody in society's benefit. That's why he  
6 got this grant. And when they say credit against loss in  
7 2B1.1(e), they are talking about monies returned, fair market  
8 value for the property returned and the services rendered.  
9 There is no way to quantify what the value of what Dr. Karron  
10 created at that time in this topographical imaging that's used  
11 today in all kinds of surgeries and what benefit it was to the  
12 nation and to the world.

13 I think that that takes this case out of the heartland  
14 because he, as you know from everything said, he didn't get  
15 involved here to benefit himself financially. He took the rent  
16 money. He shouldn't have taken it. He owed debts, so he paid  
17 the debt with the rent money. That was wrong. That was wrong.

18 I think that this case goes outside the heartland,  
19 that your Honor should consider 3553 Title 18, U.S.C., and  
20 consider giving him a nonguideline sentence. And I think that  
21 because you sat through a trial with Dr. Karron and you know  
22 all the evidence and the background and the way he was advised  
23 by people not to do this, not to do that, and he, like a bowl  
24 in a China shop, insisted on doing it his way, that is why  
25 there is really a legitimate likelihood that if he had followed

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1 protocol and followed procedure that he would not have been  
2 sitting here as a defendant in a criminal case.

3 It seemed that although the budget, which he  
4 submitted. Remember, he submitted a budget. He put down  
5 110,000 for equipment. That was what's accepted. He put down  
6 for subcontractors, he put down 250,000. He found that he  
7 could get students for free. Is he entitled to an offset or  
8 consideration for that because he didn't spend the government's  
9 money on subcontractors and got free employees to do a job?

10 There is no suggestion here that the equipment he  
11 purchased he used for other items other than this project. The  
12 government, by law, owned this equipment. Yes, at the end of  
13 the day it was possible for a grant recipient to get possession  
14 and benefit from that equipment, but, in reality, he was using  
15 government money to buy government equipment which the  
16 government took back. They not only took back their equipment,  
17 they took back everything, piece of equipment that he had,  
18 whether they had any right to it or not, and they kept it.

19 So that's where he found himself in this case. So I  
20 think when you look at the way he managed his money, he saved  
21 the government considerable money on subcontractors. He saved  
22 them, according to the government's own figures, in the first  
23 year \$174,000 just on subcontractors. He got the work done,  
24 but he didn't have to spend the money because he did something  
25 he wasn't supposed to do. He wasn't supposed to have employees

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1 without approval and we had testimony of that.

2 And in the second year they revised the budget and  
3 110,000 for subcontractors and he used 6100. You know from the  
4 testimony here that there were numbers of people working in  
5 that apartment on these computers, on this project. And the  
6 government wasn't billed for it. Why? Because he was using  
7 students. Does the government get a benefit of that? They do.

8 That is why, your Honor, the mathematical  
9 considerations of a strict guideline calculation doesn't apply  
10 in this case because Dr. Karron, with good intentions, and good  
11 intentions meaning that he wanted the research to work, because  
12 that's all he cared about. Those were the good intentions. He  
13 might have used improper means, but the intentions were there.

14 And he created a product which people built upon and I  
15 have a manuscript that was submitted to the Elsevier Editorial  
16 Systems for computer medical imaging and graphics. This is a  
17 draft manuscript that was submitted, hasn't been published yet,  
18 but it may well be published in the near future. It cites ATP,  
19 it cites Dr. Karron, and it shows that the work that he did may  
20 have a significant value. So it's hard to say what the value  
21 was, but I don't think anybody in this room could say that he  
22 didn't do the research that he was contracted to do.

23 I think your Honor has to consider the 3553 and ask  
24 yourself whether or not his background, this offense, his  
25 character, is such that should cause your Honor to impose a

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1 nonguideline sentence.

2 I think the fact that you're dealing with a man who  
3 frankly has a lot of issues. He's not a man anymore. He's, in  
4 fact, legally a woman. I spoke to the BOP. Rather, my office  
5 did. And he is and as the probation report says, he will be  
6 treated as a woman and, if confined, he will go to a women's  
7 prison. We submitted letters from people who know him. He has  
8 a generous good side to him. He has no criminality in his  
9 past, and I think that he will have no criminality in his  
10 future.

11 His mother is incapacitated. She is in a home. They  
12 are hopeful. He is now living in that house in Long Beach.  
13 Amongst the things he lost here, he lost his home. He is  
14 hopeful -- and I spoke to his brother about this. I have a  
15 letter from his brother that wasn't included in the original  
16 submissions. I am not going to burden the Court with it. He  
17 says when his mother needed assistance in the slightest way,  
18 the defendant was the one who was there because he was the  
19 closest to where his mother was situated in Staten Island, and  
20 he's hoping to be able to take his mother home, and he's  
21 learning to work a ventilator because she needs that in order  
22 to breathe, and that is the hope, that he can stay in the home  
23 there.

24 So I would ask your Honor to consider under, all these  
25 circumstances, to fashion a sentence that doesn't have

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1 confinement in a federal institution, that has house arrest,  
2 that he could function from the home that he's presently  
3 residing in Long Beach; and when his mother gets out, he can  
4 assist her there, and provide for restitution out of his future  
5 earnings, if he's able to earn anything.

6 He has been severely compromised in his profession.  
7 He has been turned down for positions because this case  
8 received a lot of notoriety. They talk about general  
9 deterrence. This case has sent a shock wave through the  
10 scientific community as to how they ought to comport themselves  
11 when dealing with federal grant and federal monies.

12 There is no question that he will never be eligible --  
13 I don't say never, but, in all probability, will not be  
14 eligible to any federal funding so that he could go ahead with  
15 his research, which is his life's work, is to do scientific  
16 research. And the question is what sentence would be  
17 appropriate under all these circumstances, and I don't see that  
18 based upon his background and characteristics that confinement  
19 is necessary here based on his history and character, and I  
20 think that that sort of sentence will be as much as necessary  
21 and not more than is necessary as the cases seem to say what  
22 punishment should be.

23 Dr. Karron would like to address you, your Honor, and  
24 I know you'll afford him that opportunity.

25 THE COURT: Does the government want to say something

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1 first?

2 MR. KWOK: Yes, we do.

3 Your Honor, we spent a good part of the afternoon  
4 arguing about loss amount, and rightly so, because the numbers  
5 can be a little bit confusing. But the defendant's conduct,  
6 when distilled to its essence, it is very clear what he did.  
7 This is not the case about someone forgetting to cross the Ts  
8 or dot the I's. This is not the a case about a technical  
9 violation. If it were, the government wouldn't have been able  
10 to show intent, and the jury wouldn't have been able to return  
11 a guilty verdict. And the jury in this case convicted the  
12 defendant because the defendant's intent was clearly shown at  
13 trial.

14 The defendant was repeatedly told to stop. The  
15 government wasn't in this to trip someone up. The trial  
16 testimony established that the people who administered the  
17 grant wanted to succeed. That's why they kept telling him and  
18 kept working with him to explain the rules to him time and time  
19 again ad nauseam. Every one of those times he could have  
20 gotten himself out of the hole that he was digging, every one  
21 of those times he could have stopped. And none of what he did,  
22 none of that money that he would spent would have even been  
23 reported to the Department of Commerce, the inspector general's  
24 office, much less prosecuted by our office, and, ultimately,  
25 the case brought before your Honor.

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1           Of course, the defendant never stopped. He kept  
2           misusing the grant money. And not only that, he tried to muck  
3           around, as Frank Spring testified, with the company's books to  
4           hide his tracks. And Mr. Rubinstein just now talked about him  
5           spending less money than he's allotted in the category of  
6           subcontracting. And the reason that's so is because he could  
7           use students so there was more money left so he could pay  
8           himself.

9           So everything ultimately comes back to how he could  
10          use the grant to benefit himself or his company that he owns,  
11          CASI, time and time again.

12          In his e-mails to his friends he didn't mince words  
13          about what he was doing. He was, in fact, brazen and open  
14          about what he was doing.

15          THE COURT: I don't think there is any evidence that  
16          he used the students so he could pay more money to himself.

17          MR. KWOK: There is evidence in the record that  
18          equipment under \$5,000 he would be able to keep at the end of  
19          the day.

20          THE COURT: It may be that it benefited him, but I am  
21          not sure from the evidence that he actually intentionally said,  
22          I am going to use students rather than subcontract so I could  
23          get money for myself. I don't think the record establishes  
24          that.

25          MR. KWOK: Let me go to the larger point. The larger

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1 point is, when no one was looking, when he thought no one was  
2 listening, in his e-mail to his friends, he was open about what  
3 he was doing. In the e-mail to his friend, he said he wanted  
4 to make a lease with his friend living in Connecticut, so he  
5 could "make like I only keep a folding bed on 33rd Street. And  
6 if ATP buys into this idea, then I can charge my rent on the  
7 apartment to the grant and pay my mortgage." He said in  
8 another e-mail that if the ATP people didn't agree with him he  
9 would turn the grant into enough of a train wreck so the  
10 government would be forced to negotiate with him and, quote,  
11 find a liveable solution for all.

12 Now, certainly in that e-mail, after his crime was  
13 detected, at no time did he show any remorse. He didn't take  
14 any responsibility for his actions. Instead, he tried to  
15 engage in, essentially, financial black mail of the government  
16 to strongarm the government to accept his fait accompli because  
17 he has misspent so much of the government's money. And this  
18 kind --

19 THE COURT: I saw that that was what he might think  
20 about doing. I don't think there is any evidence in the record  
21 that he strongarmed or attempted to strongarm the government is  
22 such.

23 MR. KWOK: I would submit to the Court that's what it  
24 means when he says, I would make the grant enough of a train  
25 wreck so that they can find a livable solution for all.

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1           THE COURT: That was one of two alternatives in that  
2 e-mail that he mentioned, rather to pay more, I think -- more  
3 money to cover the expenses or to make it a train wreck.

4           MR. KWOK: It's the government's view that those  
5 e-mails, when you take them together, it shows the type of  
6 brazenness, the type of arrogance that necessarily warrants  
7 consideration under the 3553 factors because they go directly  
8 to the seriousness of the offense.

9           Let me turn now to the defendant. Of course, none of  
10 this conduct can be considered in a vacuum. It has to be  
11 considered in the context of this defendant. And here, too,  
12 the 3553 factors argue for a meaningful custodial guidelines  
13 sentence.

14           This is not the case about someone who broke the law  
15 because he was in dire straits where some sympathy might  
16 appropriately be shown. This is not a food stamps case, this  
17 is not a housing fraud Section 8 case where we also calculate  
18 the loss under 2B1.1 where sometimes those mitigating  
19 circumstances are present.

20           This is a defendant, who under the grant in year one  
21 alone, is given an annual salary of \$175,000, \$175,000 in  
22 taxpayer's money. That's a lot of money for a lot of people,  
23 but not for this defendant because he kept misspending the  
24 government's grant money to buy equipment that he knows he's  
25 not supposed to buy.

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1           Of course, the defendant is a Ph.D. scientist from one  
2 of the finest universities in the world. He did not have to  
3 steal to put food on the table. He didn't have to steal to  
4 find a place to live. But he did it anyway.

5           I think the defendant's characteristics under 3553  
6 also argue for a custodial sentence within the guidelines.

7           Finally, your Honor, a guidelines sentence is  
8 necessary in this case to serve the goal of the terms. Anyone  
9 paying any attention to any public policy debate in the past  
10 10, 20 years knows that one of the prime arguments opponents of  
11 these government programs like to use is rampant, it is full of  
12 fraud.

13           We know that's not true in this case because we have  
14 ATP witnesses who testified that they keep a close eye on the  
15 grant. In fact, they have these rules so that they can closely  
16 monitor what the recipients are doing with government money.  
17 But there is fraud and this is one such case. And it's the  
18 government's view that when a clear-cut fraud case presents  
19 itself, there has got to be a strong deterrence, as reflected  
20 in a meaningful custodial sentence so that people who get this  
21 money will know that you can't just walk away and apologize and  
22 say, I shouldn't have done it.

23           Rather, as his business manager told him himself at  
24 the time, you could go to jail for this, and that message  
25 should be sent because it is the taxpayer's money, and for

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1 these programs to survive there must be a general deterrence  
2 message that if you misspend the government money and you get  
3 caught, you don't just get slapped on the wrist and let go.

4 For all of those reasons, because the defendant's  
5 conduct is intentional and repeatedly so, because of the  
6 characteristics of this defendant, and because of the need to  
7 serve the goals of general deterrence, the government  
8 respectfully urges the Court to impose a custodial sentence  
9 within the guidelines range.

10 THE COURT: Dr. Karron, would you like to say  
11 something at this time?

12 THE DEFENDANT: Yes, I would.

13 MR. RUBINSTEIN: Where should he make the statement  
14 from, your Honor?

15 THE COURT: You can make it sitting there or standing,  
16 whichever you wish or she wishes.

17 THE DEFENDANT: How much time do I have?

18 Your Honor, I'm deeply sorry for what I have done,  
19 more sorry than I can convey with words. I have been doing --  
20 I wish to apologize to the Court and to ATP, to Mark Stanley,  
21 who convinced me that I had a chance to win this grant, and to  
22 people of the United States, who I feel like I'm working for  
23 with this money.

24 I'm beginning to see that I violated their trust and  
25 it disturbs me tremendously for anyone to even think that I

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1 could do that. And if, in fact, I did, then I will take  
2 whatever punishment is appropriate. I can only state that I  
3 can perhaps explain myself a little bit better and maybe  
4 prevent other people from making the same mistakes I've made  
5 because I understand, from having lived through it, how the  
6 PIs, who receive large grants, think differently than the  
7 accountants and the grant managers that are responsible for the  
8 money.

9 And I feel terrible that B.J. and Jane, I got them in  
10 trouble. I got myself in a lot more trouble. My past five  
11 years have been hell. I thought I knew what I was doing and I  
12 recognize now that I really didn't know what I was doing.

13 I've spoken to other PIs, principal investigators, and  
14 I've seen them making the same mistakes, and I've tried to help  
15 them. And I know when somebody gives you \$2 million, it's  
16 like, holy cow, the government of the United States believes in  
17 me, they trust me, and they believe in my research. That's an  
18 intense thing.

19 I believed, and I'll admit that I was wrong, that I  
20 could use my salary to pay for everything that the grant --  
21 that's indirect on the grant. I didn't know how to keep track  
22 of it. I didn't know that I should have taken a paycheck,  
23 deposited it into my personal account, and then write a check  
24 back to CASI, and CASI should have written a check back to the  
25 grant. Then there would be no confusion that I seem to have in

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1 my wake.

2 Seven years ago I didn't know about accounting. I've  
3 always done contracts. I've never done grants. DARPA would  
4 give me money. They didn't care what I did with it, as long as  
5 I could produce the research that I said I could do. I never  
6 understood that a grant, you do whatever you can, but it's how  
7 you spend the money that's most important. I didn't know how  
8 to spend this money. I didn't think that I was throwing it  
9 away. I didn't think I was unduly enriching myself until a  
10 couple of years later I realized, I took too much money.

11 I didn't want to take money unless I absolutely needed  
12 it. It was like running a little business. The owner doesn't  
13 take the money unless you need it. I didn't want to take  
14 salary. I just wanted to take \$2,000 at a pop for rent. I  
15 thought I could charge it against salary. And at the end of  
16 the day, I overdid it.

17 In the second year I thought I had made amends, but  
18 the budget was wedged. I never thought that I would be impaled  
19 on my own budget. When I wrote the budget I just needed to  
20 fill something in to get the grant out the door by the  
21 deadline. I asked a couple of ATP people, what is a reasonable  
22 salary? They said, don't worry. In fact, it says, don't  
23 worry, so I didn't worry. I was just going to do the research  
24 and that was it. I took a big advance so I could eliminate all  
25 my personal and financial problems. I didn't want to have to

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1 worry about the money. I wanted to focus on the research. And  
2 trying to run this project has destroyed my life. We kept the  
3 research going after the project was suspended because the  
4 research is mine. The grant doesn't tell me how to live. The  
5 grant tells me how to spend the government's money.

6 But, anyway -- I'm getting lost.

7 I'm bullheaded. I'm boneheaded. My exwife said I  
8 couldn't tell my friends from my enemies. That's really been  
9 true in this adventure. I'm a strange person. I let people  
10 come and go. I don't know. Just do whatever you want.

11 I had some brilliant students working on this project  
12 who should have been on the payroll. I didn't put them on the  
13 payroll. One, because either I was advising them on their  
14 Ph.D., or they were already on some other payroll. This whole  
15 issue of like, you know, do I take people and pay them more for  
16 the same hours? ATP also said, don't do certain things, what I  
17 understood I could do. I didn't understand.

18 I'm boneheaded. I'm also too bright for my own good.  
19 When people told me that I could -- when I started thinking  
20 that I could use Morse Theory in digital data, in discrete  
21 picture data, pixelated data, everybody said you can't do that,  
22 it doesn't work. Morse Theory only works for continuum  
23 mechanics, not where you have imagery.

24 But Jim Cox and I talked about it. I think I see a  
25 way to do it. Despite everybody telling me, no, no, no, that's

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1 not how you do it; this is how you do it. We persisted, and  
2 for ten years we came up with digital Morse Theory and now it's  
3 becoming part of the accepted panoply of topological image  
4 processing.

5 If I listened to everybody telling me, no, no, no, you  
6 can't do it, you can't do it, fine, I'll do something else.  
7 When somebody says, you can't do it, I start blowing steam out  
8 my nose. There has got to be a way to do it.

9 We did get the power approved. I did have long  
10 discussions with B.J. and Jane about how we can fix this, how  
11 we can change this, what needs to be done. I made regular  
12 visits to Washington. I tried to keep in touch with my program  
13 managers. They came and visited regularly. We were making  
14 good scientific progress. But my attitude was, the hell with  
15 the financing, as long as I kept records. I have all of the  
16 source records. And give it to the accountant and she will  
17 figure it out.

18 And, you know, I never thought -- we didn't have a  
19 year's worth of running actuals to calculate a good budget.  
20 And towards the end the accountant was telling me, this is an  
21 unliveable budget. You can't do this project with this budget.  
22 You need to put a lot more money in. And without coinvestors  
23 and cofunding, you're going to get in trouble.

24 I thought that I could keep overhead minimal, take as  
25 little salary as I could, take rent instead of salary, which is

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1 a colossal mistake. It is more of a mistake than even this  
2 Court will understand. I have to pay tax twice on the money.  
3 This is the stupidest thing imaginable. It's like the absolute  
4 worst thing I can do. It inflated my income. The W2s and the  
5 1099s from the grant show that I made \$250,000. That's too  
6 much. Because I took the same money, gave it back to the  
7 company, and paid it again. It was spectacularly dumb.

8           The worst thing is, worst thing is that my business  
9 managers, I really wish that -- we needed to get a new budget.  
10 We needed to get a new budget approved. I think we were almost  
11 at that point and then I screwed up.

12           I'm responsible for everything I've done. I took  
13 responsibility. I kept records at the time I was doing it. I  
14 didn't think I was committing -- I was defrauding the  
15 government. I thought as long as I was doing good work, the  
16 research is moving ahead, we are presenting at conferences, I'm  
17 flying all over the country presenting. We are attracting  
18 students, we are attracting attention. That's what was  
19 important. In the past five years all -- I have bean counters  
20 going over and over and over. I'm still stuck in 2001 and  
21 2003.

22           My career is over. My colleagues don't return my  
23 phone calls. I've alienated my wife and daughter. I've had a  
24 sex change operation. I am now going to live as a woman.

25           I didn't think -- I wanted my staff to be happy and

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1 healthy. I wanted Nicky Winter, the bookkeeper, I wanted her  
2 to fix her teeth. I wanted to fix my teeth. I didn't want to  
3 have -- I wanted everybody around me to be happy. And I wanted  
4 them to know that the fringes were available. I didn't  
5 overspend the fringes.

6 After the grant was suspended I got a job with a  
7 colleague and I was much happier working for him than trying to  
8 manage my own grant. If I get out from underneath this I would  
9 like to advise Mark Stanley in the ATP program, now TIP  
10 program, what to look out for in PIs when you give them a lot  
11 of money. What are the common misunderstandings that a  
12 scientist will have when you give him a lot of money. My  
13 colleagues at City College said, we win grants, but we have  
14 almost no sale. I wanted to make my little company unique. I  
15 wanted to do things different. I wanted to do things nicer,  
16 better. I didn't know what to do and I didn't know what I was  
17 doing, and I ended up with a train wreck.

18 Lee Gurfein, my business manager, wanted to lock me up  
19 in a room and just give me a computer and let me out for air  
20 and exercise. He didn't make any coinvestment. My brother  
21 didn't have any signing authority until we had a contract with  
22 him and he gave me some money. I did everything he wanted. I  
23 did everything my accountant wanted me to do.

24 I did everything that Bob Benedict wanted me to do.  
25 If he told me not to do something, I wouldn't do it. When he

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1 told me to stop paying the rent, it was getting to be a real  
2 problem, I stopped. I had to understand why. I didn't get it  
3 right. I made a mistake. I never thought it would be this big  
4 of a mistake. If I have to go to prison for it, then I'll go  
5 to prison for it. I made a mistake. I didn't think -- I  
6 hope -- I feel terrible that people feel I violated their  
7 trust, and I'll never be able to recover that.

8 I want to finish the Joe Morse Theory. It has nothing  
9 to do with money anymore. It's something that needs to be  
10 done. It's why ATP gave me the money. The research was more  
11 important than the money, but I didn't know how to handle the  
12 money. I think if I got a job as a grants manager, because I  
13 needed a job, having made every mistake twice, I would know how  
14 to prevent it. I have been advising other colleagues, that  
15 kind of attitude is going to get you in real big trouble. I  
16 have told them that, and they usually get really mad at me.

17 Other ATP grants, when I talk with them, I said, be  
18 really careful, don't have a certain mind-set. You are not  
19 your grant. The grant funds certain activities, but don't put  
20 your ego, and get more than one grant and have more than one  
21 sponsor.

22 I thought I could do everything myself. I do  
23 everything so hard and so intensely and so monomaniacally, so  
24 bipolar that I usually get myself in trouble. This is the  
25 worst trouble I've ever got myself in. I don't know. Maybe

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Sentence

1 I've learned something from it. I tell people I made every  
2 mistake twice. It's like if anybody knows the lessons of  
3 managing federal and public money, so that everybody can look  
4 at it and say, yeah, there is no problem with that, I think I  
5 know how to do it.

6 I could probably pass the CPA exam now. Do I feel  
7 comfortable defending what I did, knowing what I did in 2001  
8 with what I know now in 2008? Absolutely not. I made a mess.  
9 It was a big mess. But it was fixable. And I wasn't able to  
10 fix it. It was too much of a mess, and I just wanted to focus  
11 on the research, and I decided to do good work and maybe  
12 something good would come out of it.

13 If I need to go to jail, I'll go to jail. I would  
14 like to finish what I started. I would like to help the ATP  
15 program in the sense that I can probably smell fraud brewing in  
16 the mind-sets of the PIs. Because I have a sense now of what  
17 this entails, particularly in small startups, very small  
18 startups. That's what ATP wanted to fund, and they should  
19 continue to do it, but they need special supervision. When I  
20 was doing SBIR grants, they have special supervision for SBIR  
21 grants because the PIs don't always know what they are doing.

22 I don't have a home to go to. My mom is going to die  
23 soon. I want to bring her home to die.

24 Am I wandering off too far?

25 THE COURT: I couldn't hear you.

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Sentence

1 THE DEFENDANT: Am I wandering off too far or am I  
2 becoming incomprehensible?

3 My mom is going to die soon. She is on a ventilator.  
4 She is on a feeding tube. I'm only trying to bring her home,  
5 with my family's consent, so that she is at least home, because  
6 that's where she always wanted to be. After she passes on, we  
7 are going to have to sell the house anyway because of the bills  
8 from the nursing home. If I have to go to prison, I would like  
9 to at least see her through.

10 I'm taking classes now on ventilator care, so at  
11 least -- we have three shifts of nurses at the house running a  
12 ventilator. I need to be able to cover them. My Ph.D. is  
13 sufficiently medical, and I have enough insight on how to run a  
14 ventilator that I need a lot of training so I don't screw up,  
15 because I think I know what I'm doing, and Mondays are usually  
16 my days to go get training.

17 I pre-separated from paying myself rent because I  
18 thought I wanted to take rent as I needed it and not use  
19 salary, and just use my salary line to pay utilities and  
20 telephone and the legal cost, the bills to Pennie & Edmonds. I  
21 tried to keep a green check and a burgundy check. Green checks  
22 were nonprogram, burgundy was program.

23 But we didn't set up the account before we got the  
24 first payment from ATP. I took too much money at the  
25 beginning, and I tried to put it back. The way I tried to put

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Sentence

1 it back. Now I just did it all wrong. I thought it didn't  
2 matter where I spent the money out of. I just give ATP a stack  
3 of receipts.

4 I tried to keep good records. I got consumed with  
5 recordkeeping. It's like I was telling -- it's like I got  
6 buried in receipts that I lost and I never added them up. I  
7 just took pictures of them and filed them under each day and  
8 let the accountant deal with it. She got lost.

9 I think the best thing I can do for my country is  
10 prevent me from happening again. I don't know that I will ever  
11 personally handle big federal projects, but I think I can be of  
12 value to the program, particularly since they are going to be  
13 gun shy to giving money to small grant recipients. And I feel  
14 terrible because Mark really believed in me, the program  
15 director.

16 If there is something that can be done with me to help  
17 the program, I would do it any way I can. I'm happy to lecture  
18 and explain how to get yourself in trouble with more money than  
19 you can deal with. I don't know whether that would help. I  
20 didn't believe that I really misspent money until I finally had  
21 to really, really study exactly what I did, like a third person  
22 did it, and I admit I took too much money.

23 But I didn't not do research. I didn't advance the  
24 state of the art. The big problem is that I spent so much time  
25 being an amateur accountant that I couldn't be a professional

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1 scientist.

2 If you can find it in your heart to -- I'm sorry. I'd  
3 like this to be over and I would like to move on. If I can  
4 help, I will. If making me an example by spending a few years  
5 will prison to help, that's what I need to do. If making me an  
6 example and I can prevent other people from getting the  
7 boneheaded mind-set that I have, maybe my experience is more  
8 valuable in some other setting.

9 I would like to finish the research. And the program  
10 would actually -- they are horrified of what's happened, but I  
11 think there is a reason why they never completely shut down the  
12 grant. They just want me to clean up my act. If we could  
13 finish the program with somebody else running it, that's fine,  
14 too. My boss at ATP could administer it for me.

15 Having worked in a big federal defense contractor, I  
16 see how they do it. If I had spent a couple of years working  
17 in a large corporation, perhaps I would see how these are done.  
18 I have never done that. I now know more about grants  
19 management than I care to.

20 I don't know what else to say. I'm really sorry. I  
21 didn't try to hide it from anybody. And people call up and  
22 say, what's going on? I say, I have been convicted of stealing  
23 from the grant. If that's what I did, then I did it, but I  
24 never kept it a secret. I took pictures of everything I did.  
25 I kept records to hang myself, because I never thought I would

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Sentence

1 be hanging. I have never thought I would be impaled.

2 I'm redundant and I'm repetitive and I forget what I  
3 say, and I'm a disaster. I really am. I will be late for my  
4 own funeral. If I do something too fast, I always forget  
5 something, screw something up.

6 I apologize to the Court for keeping you this late and  
7 for everything else that I've done in the past.

8 Thank you, your Honor.

9 THE COURT: Thank you.

10 As I said, under the guidelines, the Court's findings  
11 are that the base offense level for this violation for Title 18  
12 Section 666 is found under 2B1.1. The base offense level under  
13 subsection (a)(2) of that guidelines is 6. Because more than  
14 \$120,000 was lost through inappropriate expenses, 10 points are  
15 added. Making that decision the Court looked to guideline note  
16 which applies to 2F. The guideline note that applies to grants  
17 is federal grant under guideline commentary (f)(2)(ii). At  
18 that guideline of 16, the guidelines calls for a sentence of 21  
19 to 27 months in prison.

20 Turning to 18 3553(a) of Title 18, the Court, as the  
21 Court must, consider any guidelines sentence as a result of the  
22 Booker decision, the Court must take into account the history  
23 and circumstances of the offense, history and characteristics  
24 of the defendant. The defendant here has no prior record.

25 And addressing the Court he said that he's never

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Sentence

1 before had the responsibility before of handling a federal  
2 grant and dealt with contracts in the past. Those are  
3 contracts, I gather, to perform specific services for a fee,  
4 which is a little different than a federal grant. Both of  
5 those circumstances relate to the circumstances of the offense  
6 and the history and characteristics of the defendant.

7 But the Court must also impose a sentence which is  
8 sufficient but not greater than necessary to comply with the  
9 purposes set forth in subparagraph 2 of 3553(a), and that is  
10 the need for the sentence imposed to reflect the seriousness of  
11 the offense, to promote respect for the law, and to provide a  
12 just punishment for the offense; B, to afford adequate  
13 deterrence to criminal conduct of other persons, and to protect  
14 the public from further crimes of the defendant -- C, to  
15 protect the public from further crimes of the defendant; and,  
16 D, to provide the defendant with needed educational and  
17 vocational training, medical care, or other correctional  
18 treatment in the most effective manner.

19 I don't believe that it would be necessary to protect  
20 the public from further crimes of the defendant that would  
21 serve to ameliorate the penalty imposed under the guidelines.

22 I have some difficulty with this case because  
23 delineating the intent of the defendant is difficult for me.  
24 It is true that the loss is at least \$120,000, but the  
25 defendant's intent in causing that loss is something that the

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Sentence

1 Court has been concerned about.

2 And, on the other hand, the Court has to consider a  
3 sentence that affords adequate deterrence to criminal conduct  
4 and the government gives these grants, they are placing a lot  
5 of trust in the grantee. It's important that the grantee not  
6 intentionally misapply the funds.

7 It's clear to me that there was an intentional  
8 misapplication of the rent money. The defendant was told time  
9 and time again not to use the rent funds for rent or for  
10 utilities. That's what the record here substantiates. That's  
11 a lesser sum than the sum found in the guidelines.

12 Under the circumstances, it seems to me as the first  
13 offense that the Court should not impose a sentence that is  
14 heavy as the guideline and, yet, impose a sentence that  
15 provides deterrence to other people. I am going to vary the  
16 sentence pursuant to Section 3553(a).

17 I am going to impose a sentence of 15 months under  
18 zone C of the guidelines, one half of the term to be served in  
19 prison and one half of home confinement, eight months'  
20 imprisonment, and the remainder in home confinement.

21 The term of supervised release is three years,  
22 restitution in the amount of \$120,000. That's required, I  
23 guess. And a special assessment of \$100. I think I'm right on  
24 the split sentence, that if it falls in the 12 category, I can  
25 give the split sentence.

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Sentence

1 MR. KWOK: Section 5C1.1, section D.

2 MR. EVERDELL: Yes, your Honor, I believe it is  
3 correct. It has to be a one-for-one ratio.

4 THE COURT: One has to be imprisonment, the other has  
5 to be home confinement.

6 MR. EVERDELL: That's correct.

7 THE COURT: That's to enable defendant to take care of  
8 his mother as soon as possible.

9 Three years of supervised release. There will also be  
10 a \$100 assessment as provided by the law. The conditions of  
11 supervised release are: The defendant shall not commit another  
12 federal, state, or local crime; shall not illegally possess a  
13 controlled substance; shall not possess a firearm or  
14 destructive device. Mandatory drug testing is suspended due to  
15 the Court's determination that defendant poses little risk of  
16 future substance abuse. The defendant shall cooperate in the  
17 collection of DNA as directed by the probation officer.

18 Standard conditions of supervision 1 through 13 will  
19 also apply with the following special conditions: Defendant  
20 shall provide the probation officer with access to any  
21 requested financial information; defendant shall not incur new  
22 credit charges or open additional lines of credit without  
23 approval of the probation officer unless the defendant is in  
24 compliance with the installment schedule, installment payment  
25 schedule.

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1 Defendant is to report to the nearest probation office  
2 within 72 hours of release from custody and be supervised in  
3 the district of his residence. \$100 will be due immediately.  
4 That's the special assessment. The restitution shall be in the  
5 amount of \$120,000, payable to the clerk of the United States  
6 District Court for disbursement to Julie Weiblinger, U.S.  
7 Department of Commerce, National Institute of Standards and  
8 Technology, Advanced Technology Program Receivables Group, 100  
9 Bureau Drive, Mail Stop 1624, Gaithersburg, Maryland  
10 20899-1624.

11 The restitution shall be paid in monthly installments  
12 of 10 percent of gross monthly income over the period of  
13 supervision to commence 30 days after the date of release from  
14 custody, and the defendant shall notify the U.S. Attorney's  
15 Office for this district within 30 days of any change of name  
16 or residence address that occurs while any portion of the  
17 restitution remains unpaid.

18 If the defendant is engaged in BOP non-UNICOR program,  
19 the defendant shall pay \$25 per quarter towards the  
20 restitution. However, if the defendant participates in the  
21 BOP's UNICOR program as a grade 1 through 4, the defendant  
22 shall pay 50 percent of her UNICOR earnings to any financial  
23 penalties, consistent with Bureau of Prisons regulations of 28  
24 CFI Section 45.11. The factors in 18 United States Code  
25 Section 3664(f)(2) were considered in formulating the payment

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Sentence

1 schedule.

2 There will be no fine in this case in view of the  
3 restitution requirements.

4 I gather you want to have a voluntary surrender,  
5 Mr. Rubinstein?

6 MR. RUBINSTEIN: Yes, your Honor. I was wondering, if  
7 it's possible, I don't know how it works. Is it possible to do  
8 the home confinement first and then the incarceration  
9 afterwards? So this way if they can get his mother home,  
10 because her life expectancy isn't that long.

11 THE COURT: It seems to me that it could. I don't see  
12 anything under the section that says it couldn't. It certainly  
13 surprises me.

14 MR. EVERDELL: I'm sorry to interrupt, your Honor. I  
15 do have a different case with Judge Kaplan where he did allow  
16 that very thing to happen. If that precedent counts for  
17 anything, I believe there is a precedent in the Southern  
18 District for doing this.

19 THE COURT: I am going to do it that way. So the home  
20 confinement period will start. You better see that the  
21 defendant sees the probation officer in the next 24 hours, Mr.  
22 Rubinstein.

23 MR. RUBINSTEIN: Absolutely. I will go there  
24 tomorrow.

25 THE COURT: We will make arrangements for home

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1 confinement to start. If you have home confinement, there will  
2 have to be a telephone without call forwarding in the residence  
3 in which the defendant would be located because they have to  
4 know that he's not leaving the premises during the period of  
5 home confinement. Home confinement is not to interfere with  
6 religious services or employment, but it will require the  
7 defendant to be home in the evening and nonworking hours part  
8 of the day.

9 MR. RUBINSTEIN: And medical, your Honor?

10 THE COURT: What?

11 MR. RUBINSTEIN: And medical.

12 THE COURT: Of course, he can attend medical  
13 appointments for himself and his mother.

14 There will be no call forwarding or call waiting or  
15 modem attached to the telephones. It's clear that he is  
16 serving his term of home confinement without any further  
17 investigation by the probation office.

18 MR. RUBINSTEIN: Your Honor, would your Honor  
19 consider -- first, on the restitution, did your Honor say how  
20 that's to be paid?

21 THE COURT: Yes, I did. 10 percent of gross pay.

22 MR. RUBINSTEIN: Is that without interest?

23 THE COURT: I leave that to the greater, higher  
24 authorities. I believe that interest does run.

25 MR. RUBINSTEIN: Would your Honor --

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1 THE COURT: I believe interest runs. But it can start  
2 after the period of incarceration.

3 MR. RUBINSTEIN: Your Honor, I believe that the  
4 defendant wishes to appeal this matter. That's what I've been  
5 informed. In view of that, I wonder if your Honor will  
6 consider releasing him pending the appeal. He is going to be  
7 on house arrest for seven and a half -- I'll reserve the right  
8 to make that application.

9 THE COURT: He can appeal, but I don't see where you  
10 can appeal, but is that beneficial to your situation for me to  
11 suspend the imposition of sentence pending the appeal?

12 MR. RUBINSTEIN: I would like to serve the house  
13 arrest portion while his mother is alive.

14 THE COURT: I can't break it up, I don't believe,  
15 under the statute.

16 MR. RUBINSTEIN: I'll have to consider it, Judge. We  
17 will go to probation tomorrow. As far as the house arrest, we  
18 don't have a problem with starting that immediately.

19 THE COURT: Make an expedited appeal.

20 MR. RUBINSTEIN: File an expedited appeal?

21 THE COURT: All right.

22 MR. RUBINSTEIN: Thank you very much, your Honor.  
23 Good night.

24 MR. KWOK: A few things, your Honor.

25 If the government could request the Court to give an

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Sentence

1 oral pronouncement of his forfeiture order. There is a  
2 forfeiture allegation in the indictment.

3 THE COURT: Is forfeiture required here? I didn't see  
4 that in the presentence report.

5 MR. KWOK: It is not reflected in the presentence  
6 report, but, as your Honor might recall, there was an order by  
7 stipulation between the parties where we seized the proceeds  
8 from the sale of defendant's apartment. And so if we could  
9 forfeit that in partial satisfaction of the restitution  
10 obligation.

11 THE COURT: You can submit a forfeiture order, yes.

12 MR. RUBINSTEIN: The marshals are holding those funds,  
13 if that's what the government is talking about.

14 THE COURT: I have to make an order with respect to  
15 it. The marshals already have it.

16 MR. KWOK: But the order the Court signed says that  
17 the money will be held with the U.S. Marshals pending further  
18 order of the Court. We will certainly submit an order to  
19 release those funds.

20 THE COURT: So ordered.

21 MR. KWOK: Thank you.

22 Also, just one last matter. Because this is a second  
23 superseding indictment, the government moves that the  
24 underlying indictments be dismissed.

25 THE COURT: That's granted. I am sure there is no

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Sentence

1 opposition to that.

2 MR. RUBINSTEIN: No opposition, your Honor.

3 THE COURT: You have ten days to file a notice of  
4 appeal, Dr. Karron. All you have to do is write a letter to  
5 the Court, United States District Court, 500 Pearl Street, New  
6 York, New York, and say, I wish to appeal and that will  
7 preserve your appeal, but you have to do it within the ten-day  
8 period because, otherwise, the Second Circuit will say you  
9 waived your right to appeal by not filing that letter within  
10 the ten-day period.

11 You understand me? You're nodding yes.

12 If you want to appeal, you just write the letter  
13 within ten days and that preserves your right. If you don't  
14 write it in the ten-day period, you lose your right to appeal.  
15 If you don't have funds for an appeal, the Court of Appeals  
16 will decide on it for you to handle your appeal free of charge.

17 MR. RUBINSTEIN: What they do, Judge, in reality, is,  
18 they assign trial counsel free of charge. I had that  
19 experience with Judge Kaplan, who was mentioned once today  
20 already.

21 o0o

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23

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25